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## BEFORE THE ARIZONA CORPORATION COMMISSION

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Chairman  
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Commissioner  
**MARC SPITZER**  
Commissioner

Arizona Corporation Commission

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IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S  
COMPLIANCE WITH § 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996

Docket No. T-00000A-95-0238

AT&T and TCG Phoenix's  
Comments on Staff's Final Report on  
Qwest's Compliance with Section 271,  
Emerging Services

AT&T Communications of the Mountain States, Inc. and TCG Phoenix  
(collectively "AT&T") file these comments on Staff's Final Report on Qwest's  
Compliance with Section 271, Emerging Services.

## I. INTRODUCTION

On July 9, 2001, Arizona Corporation Commission Staff ("Staff") issued its Final Report on Qwest's Compliance With Section 271, Emerging Services ("Final Report"). In doing so, Staff adopted, in part, a facilitator's report on emerging services from the Multi-State 271 proceedings<sup>1</sup> drafted by a facilitator, John Antonuk, ("the Multi-State report"). To the best of AT&T's knowledge, the report is not part of the Arizona record. Instead, Qwest unilaterally forwarded the Antonuk report to Staff on June 28, 2001.<sup>2</sup> Qwest requested that the ACC abandon any further workshops and instead adopt the Antonuk report.

Accordingly, as Arizona did not participate in the Multi-State proceedings nor

<sup>1</sup> The Multi-State includes proceedings for the states of Utah, Montana, Idaho, North Dakota, Iowa and New Mexico. It does not include Arizona.

<sup>2</sup> See Letter from Chuck Steese, Esq. to Maureen Scott, Esq. dated June 28, 2001 (Exhibit A).

incorporate or review its transcripts, while adopting in part, its order, AT&T is concerned that there is no factual support in the record in Arizona related to Staff's findings. The FCC is clear that in order for (the FCC) to support a finding that the requirements of Section 271 have been met, a state must create a detailed and extensive record which includes an exhaustive and rigorous investigation.<sup>3</sup> Without opportunity for the parties to create a detailed record of the issues as they currently stand, AT&T believes that the FCC's mandate for consideration has not been met. Accordingly, AT&T objects to the utilization of the Antonuk report in Arizona without building an exhaustive record related to the report.

Regardless, with respect to the Staff's resolution of the impasse issues, AT&T will limit these Comments to those resolutions or outstanding issues that require additional discussion or clarification. Moreover, AT&T's Comments may offer revisions to proposed resolutions. These Comments should not be considered as a waiver of any appropriate future argument on any disputes about emerging services with either the Arizona Corporation Commission ("Commission") or the Federal Communications Commission ("FCC"). AT&T expressly reserves the right to challenge any conclusion of law or finding of fact made in the Report in all appropriate forums.

Generally, the discussion that follows is organized by Emerging Services categories and then, within those categories, the issues and clarification requests are discussed singly unless a general SGAT topic warrants combining a group of SGAT sections to avoid redundant discussion.

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<sup>3</sup> See *In the Matter of Application of Bell Atlantic New York for Authorization Under Section 271 of the Telecommunications Act to Provide In-Region, InterLATA Service for the State of New York*, Memorandum Opinion and Order, CC Docket No. 99-295 at ¶20 (Rel. Dec. 22, 1999).

## II. SUBLOOP ISSUES

DISPUTED ISSUE NO. 1: Whether the SGAT's Provisions for Access for Subloop Elements at MTE Terminals is Consistent With the FCC's Definition of, and Rules Regarding Access to, the Unbundled NID?

The Antonuk report that Staff relies on dismisses the need to adhere to FCC holdings in order to secure various CLEC access parameters to Qwest subloop elements.<sup>4</sup> In sum, the Antonuk Report indicates that reliance on broad FCC definitions including the definition of the Network Interface Device ("NID") is "not particularly helpful in this particular context."<sup>5</sup> Instead, the Antonuk Report proposes a six-pronged analysis to determine the appropriateness of access to a particular subloop element.<sup>6</sup>

There are numerous problems with this approach. First, the Antonuk Report recommendation ignores extremely significant FCC language which grants substantially liberal access rights to the CLECs. If the Commission takes into consideration that the Qwest defined building terminal is what AT&T and the FCC define as a NID<sup>7</sup>, there is an irrefutable presumption that access to it is technically feasible. Furthermore, there is an FCC finding of the particular importance of NID access because denial of efficient, unencumbered access "would materially diminish a competitor's ability to provide the services it seeks to offer"<sup>8</sup> and "would materially raise entry costs, delay broad facilities-based entry and materially limit the scope of the competitor's service offerings."<sup>9</sup>

Accordingly, the FCC is clear that if a CLEC wishes to access a NID, it has the right to

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<sup>4</sup> See Multi-State Report at p. 29.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, at pp. 29 - 30.

<sup>7</sup> *UNE Remand Order* at ¶ 233 (redefining the NID to "include all features, functions and capabilities of the facilities used to connect the loop distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism.")

<sup>8</sup> *Id.* at ¶ 237.

<sup>9</sup> *Id.*

access it, regardless of what the NID looks like, if the NID is attached to the building or what its technical configuration is.<sup>10</sup>

Second, the Antonuk Report recommendation usurps certain rights to CLEC access which has been granted by the FCC. If what the CLECs are trying to access is not discretely and particularly defined, as under the Report recommended SGAT language, every time the CLECs came across a new "configuration", Qwest would be afforded the opportunity to create standard terms and conditions *for CLEC access*.<sup>11</sup> Utilizing the FCC dicta, the CLECs have been granted unencumbered access to the NID and other subloop elements in order to capture network access. Qwest should not be allowed to create access parameters to that access, except for the obvious unwritten need to utilize technically feasible and appropriate methods for wire capture.

Finally, the Antonuk Report recommendation creates more practical problems than answers. Viewing the language in a practical context, when an AT&T technician comes across a new type of terminal, he or she would first have to contact AT&T attorneys to determine if access to that particular type of terminal was contemplated in the SGAT. If not, without any timeframe, Qwest would have the opportunity to develop access parameters utilizing six factors including a 'catch-all' factor of taking into consideration "any other requirements, standards, or practices necessary to assure the safe and reliable operation of all carriers' facilities."<sup>12</sup> Presumably, under this scenario, the CLEC would have to wait, possibly *ad infinitum*, for Qwest to put forward the access protocol while AT&T and its customers have to wait. After that, if the CLEC disagrees

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<sup>10</sup> *Id.*

<sup>11</sup> *See* Multi-State Report at p. 30 (emphasis added.)

<sup>12</sup> *Id.*

with the access protocol, it would have to engage in a lengthy dispute resolution process. Accordingly, the Antonuk Report's recommendation as adopted by ACC Staff has the strong possibility of delaying broad facilities-based entry, precisely what the FCC mandated against.

Accordingly, the Commission should adopt the FCC's NID and other subloop access analysis as well as adopt AT&T's proposal Sec. 9.3.1.4 regarding subloop access, and reject the Antonuk Report findings on this disputed issue as adopted by the ACC Staff.

DISPUTED ISSUE NO. 2: Whether CLECs Must Submit LSRs to Order Subloops?

In order to address accessibility concerns on the LSR, the Final Report has adopted the following language from the Antonuk Report:

For access to Qwest's on-premises MTE wire as a subloop element, a CLEC shall be required to submit an LSR, but need not include thereon the circuit-identifying information or await completion of LSR processing by Qwest before securing such access. Qwest shall secure the circuit-identifying information, and will be responsible for entering it on the LSR when it is received. Qwest shall be entitled to charge for the subloop element at the time of LSR submission by the CLEC.<sup>13</sup>

The Antonuk Report also indicated that the CLECs would not need to include the circuit identifying information, but instead could rely on Qwest for that inventorying.<sup>14</sup>

While any relief on the LSR requirement for access is welcome by AT&T, the Antonuk Report's proposed solution as adopted by ACC Staff does not alleviate AT&T's numerous concerns.

Pursuant to FCC mandate and as mentioned in AT&T's brief, AT&T merely

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<sup>13</sup> Final Report at p. 39.

<sup>14</sup> *Id.* at p. 38.

intends to capture the internal wiring through the NID.<sup>15</sup> As stated above, this access should be simple and unencumbered. Thus, an LSR process, which is costly, currently technically infeasible and burdensome, is discriminatory to the CLEC, especially when more simple methods produce the same result. The FCC has made clear that the incumbent LEC cannot utilize over-engineered processes or other steps that merely raise costs which have the effect of inhibiting market entry.<sup>16</sup> It is clear, when there are far less burdensome means for obtaining this information, the purpose of the LSR is that which has been prohibited by the FCC.

It is important to note that neither AT&T nor any other CLEC that AT&T knows of have developed or incorporated systems to provide LSRs for capturing internal customers. Furthermore, Qwest has not put forward any type of technical LSR protocol. Thus, this type of LSR remains merely a concept consequently making the issue extremely difficult for CLECs who have customers waiting for various services.

In its proposal, AT&T indicates that it would provide relevant information that Qwest asserts it would need, in a statement format, on a monthly basis.<sup>17</sup> The issue then becomes the timing and method of providing the information. AT&T would be willing to curtail its timing position. However, if a new type of LSR is required, it will seriously inhibit competition because AT&T neither has the systems nor the personnel to contemplate such a transfer of information under that format. Accordingly, AT&T urges the Commission to explore the possibility of alternative methods for Qwest to receive the information it claims is required, including implementing AT&T's Proposal

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<sup>15</sup> See Section A above for the FCC and AT&T definition of the NID.

<sup>16</sup> FCC MTE Order at ¶¶ 18 - 19.

<sup>17</sup> See AT&T Proposal Sec. 9.3.8.8.

9.3.8.8.2, in order to further competition.

DISPUTED ISSUE NO. 3: Whether an Inventory of CLEC Facilities Must be Created Before CLECs May Obtain Access to Subloop Elements in an "MTE Terminal"?

AT&T agrees with the Final Report's finding on this issue if the Commission requires an LSR.<sup>18</sup> If the Commission finds that no LSR is required, AT&T agrees that any inventorying that Qwest decides to engage in should not inhibit any CLEC's entry into an MTE.

DISPUTED ISSUE NO. 4: Whether Qwest Must Determine Whether it Owns the Intrabuilding Cable (or Inside Wire) Before a CLEC May Access Subloop Elements? If so, Whether Qwest's Processes for Determining Such Ownership Are Appropriate.

AT&T agrees with the Final Report's finding on this issue.

DISPUTED ISSUE NO. 5: Assuming Qwest's Processes (Including Qwest's Determination of Ownership, Inventory of Terminations, FCP and Collocation Processes) Are Appropriate, Whether the Intervals Provided by Qwest for Such Processes Are Appropriate?

This issue appears to be consolidated in Disputed Issues No. 1-4. Please see AT&T's comments on Disputed Issues No. 1-4 *supra*.

DISPUTED ISSUE NO. 6: Whether CLEC is Entitled to the Option of Having Qwest or CLEC Run the Jumpers Necessary to Access Subloops in MTE Terminals Regardless of the Type of Subloop Ordered or is Section 9.3.5.4.5. the Proper Approach (for Intrabuilding Cable, CLECs run the Jumpers and, for Other Subloops, Qwest Runs the Jumpers)?

As the Final Report mentions, this impasse issue is closely related to the first impasse issue related to access to subloop elements at MTE Terminals.<sup>19</sup> Accordingly, AT&T's comments mirror those in its comments on Disputed Issue No. 1 *supra*.

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<sup>18</sup> See Disputed Issue No. 2 *supra*.

<sup>19</sup> Final Report at p. 39.

DISPUTED ISSUE NO. 7: Whether Qwest Must Provide Access to Copper Feeder and Fiber Subloops?

AT&T agrees with the Final Report's rendition of the issue including that "to the extent that Qwest has provided modified and new SGAT language, Staff considers this issue closed."<sup>20</sup> AT&T awaits the review of Qwest's SGAT language, including reference of copper feeder and fiber subloops in the Special Request Process SGAT language, to assure compliance on this issue.

DISPUTED ISSUE NO. 8: Whether the Rate for Loop Facilities on a Campus, Including Cabling Between Buildings Should be the Same as Distribution Subloop or Priced as a Separate Subloop Element?

AT&T takes exception to the Final Report's recommendation to defer issues of Qwest subloop pricing and cost of subloop unbundling to a separate cost docket.<sup>21</sup> AT&T realizes that it may be appropriate to defer to a cost docket in certain circumstances. However, in regards to subloop issues, there is no doubt about how seminal the issue is to the Telecommunications Act of 1996's (the "Act's") requirements of just and reasonable access rates for network elements in order to establish 47 U.S.C. 271 compliance.<sup>22</sup>

This is especially true in light of the circumstances in this docket. Subsequent to the last Multi-State collaborative emerging services workshop, Qwest "acquiesced" to direct MTE access but included various charges including a subloop recurring charge<sup>23</sup>, subloop non-recurring charge for inventorying<sup>24</sup>, and a subloop jumpering charge<sup>25</sup>.

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<sup>20</sup> *Id.* at p. 41.

<sup>21</sup> *Id.* at p. 46.

<sup>22</sup> See 47 U.S.C. 271(c)(2)(B)(2) referencing the need to establish just and reasonable rates pursuant to 47 U.S.C. 252(d)(1).

<sup>23</sup> See e.g. *Qwest Nebraska SGAT*, 9.3.6.1.1 filed May 22, 2001.

<sup>24</sup> *Id.* at 9.3.6.4.1.

<sup>25</sup> *Id.* at 9.3.6.4.2.

AT&T believes that the mere presence of many of these charges is discriminatory. However, even if the Arizona Corporation Commission believes that each one of Qwest's outlined charges is appropriate, if these charges are non-compliant with Telecommunications Act pricing parameters, Qwest still has not complied with the Act's requirements for 271 relief.<sup>26</sup> Even more importantly, instead of barring CLECs from physical access, Qwest can utilize discriminatory pricing parameters to alternatively bar CLEC access.

As such, the Commission must pay particular attention to these charges in determining 47 U.S.C. 271 compliance making it inappropriate to address these issues exclusively in a cost docket. Qwest should, at a minimum, be required to explain the basis for its costs. In the alternative, if the Commission decides to address these issues in its cost dockets exclusively, they should not issue an opinion on Qwest compliance until the completion of the relevant pricing analysis in those dockets.<sup>27</sup>

DISPUTED ISSUE NO. 9: Whether it is Necessary or Appropriate for Qwest to Require a Separate Process (Special Request Process (SRP)) for Requesting Additional Subloop Elements (*i.e.* Must Qwest Develop a Standard Subloop Offering for Every Conceivable Subloop Type Even if Demand for the Product is Virtually Nonexistent?)

AT&T agrees with Staff's rendition of this issue.

### **III. DARK FIBER**

#### **A. Affiliate Obligations to Provide Access to Dark Fiber and Access to Dark Fiber in Joint Build Arrangements.**

AT&T argues that Sections 251(c)(3) and 252(d)(1) of the Act obligate Qwest to ensure that all in region dark fiber is made available to requesting carriers because Qwest

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<sup>26</sup> See 47 U.S.C. 271(c)(2)(B)(2).

<sup>27</sup> See 47 U.S.C. 271(d)(2)(B).

and its affiliates constitute “successors and assigns” under Section 221(h) of the Act that are required to unbundled network elements. Specifically, AT&T argues that Qwest’s SGAT me amended to require all in-region affiliates of Qwest to unbundled dark fiber. In addition, AT&T argued that fiber employed by Qwest as a consequence of any “joint build” arrangements be made available to CLECs.

The Staff declined to explicitly impose such a requirement on Qwest. Instead, the Staff developed an alternative proposal, not originally proposed by any party. The Staff proposed that language be added to section 9.7.1.<sup>28</sup> Although AT&T does not waive any right to argue the appropriateness of the Staff’s findings of fact and conclusions of law, AT&T recommends modification to the Staff’s proposal.

First, the Staff has not proposed any specific language for inclusion into the SGAT. AT&T requests that Qwest provide a draft of the language it proposes to be included in the SGAT to satisfy the Staff’s recommendation. Upon review, AT&T and other CLECs must have an opportunity to comment on the feasibility and appropriateness of Qwest’s proposal.

Second, as argued in AT&T’s brief, Qwest’s obligations to unbundle network elements obtained from affiliates applies beyond merely the provisioning of dark fiber. Indeed, there is no logical reason that the language the Staff urges Qwest to be developed could not or should not be extended to apply to all unbundled network elements provided to Qwest by Qwest’s affiliates, such as other forms of transport. Indeed, the only change required to ensure that this provision appropriate applies to other UNEs is to ensure that Qwest’s provision applies to all “Deployed Unbundled Network Element facilities.”

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<sup>28</sup> Final Report at p. 48.

Accordingly, this revised language should be included at the end of SGAT Section 9.1, which deals generically with all UNEs, not Section 9.7.1, which deals specifically with dark fiber.

Third, any provision proposed by Qwest should include language that permits his proposal to be more easily policed. Under a provision proposed by Mr. Antonuk in the Multi-State proceeding, if Qwest refuses or denies access to a UNE because it asserts that it has no right to extend access to such a UNE or that to extend such access would be inconsistent with the restrictions on Qwest's access, CLEC has no ability to challenge such an assertion except to escalate the dispute to dispute resolution. Use of that language here would not address these concerns. If Qwest intends to use such language here, AT&T proposes that as a means to satisfy a CLEC as to the restrictions Qwest purports to apply to its own access, Qwest be required to disclose to the CLEC the agreement under which Qwest has obtained access to such facilities. If no agreement exists, Qwest should be required to describe the "actual practice and custom" which applies or to certify that no agreement, custom or practice exists to permit access to CLECs. AT&T anticipates that Qwest will object to disclosure on the grounds that any such arrangement, custom or practice is subject to an expectation of privacy between Qwest and the other party. AT&T recognizes that this issue is similar to Checklist Item 3, Issue Number 3,<sup>29</sup> which is still the subject of discussions between the parties. Nonetheless, AT&T recommends that Qwest's anticipated concerns be resolved in the same way as the resolution reached for that issue, with one exception: agreements between Qwest's and its affiliates should not be subject to such nondisclosure

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<sup>29</sup> This issue has evolved into a discussion on how to handle liability in the event that a CLEC requests access to a Right of Way Agreement.

expectations, and accordingly, Qwest should neither require AT&T to seek permission of the Qwest affiliate for disclosure nor indemnify Qwest for such disclosure.<sup>30</sup>

Finally, AT&T anticipates that Qwest will employ the language adopted by Mr. Antonuk in the Multi-State report. There, Mr. Antonuk attempted to make clear Qwest's obligation to afford access to dark fiber by defining "deployed Dark Fiber facilities." Such dark fiber includes "in place" and "easily called into service facilities," but does not include dark fiber if Qwest would be required to "extend access in a manner that is inconsistent with the restrictions and other terms and conditions *that apply to Qwest's access.*"<sup>31</sup> AT&T understood Mr. Antonuk's order to mean, for example, that if another entity, included a Qwest affiliate, provides a facility to Qwest for the provisioning of local service that contain a restriction in the form of a term of years, but no other restriction, a CLEC must be afforded access to it, but only to the extent that a CLEC's access is not greater than Qwest's. In such example, the only restriction shall be that the CLEC shall have access, but only for the term of years for which Qwest has access. If Qwest relies on the language suggested by Mr. Antonuk, AT&T requests that Qwest confirms Qwest's intentions so as to make this issue clear.

**B. Applying a Local Exchange Usage Requirement to Dark Fiber**

AT&T argued that it was inappropriate to apply to dark fiber the local exchange use restriction explicitly set forth in by the FCC in the UNE Remand Order in reference

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<sup>30</sup> Imagine a contrary result, where Qwest would require AT&T to seek the consent of a Qwest affiliate to such disclosure. Either AT&T would be subjected to a meaningless formality (many of the personnel who would be instrumental in evaluating such request, including attorneys, would be the same) or AT&T would be denied access. Query what interest Qwest or its affiliates (who by definition are under common control) would have to make disclosure?

<sup>31</sup> Multi-State Report at p. 55 (emphasis added).

to EELs. Accordingly, AT&T requested that the restriction included by Qwest in SGAT section 9.7.2.9. The Staff agreed with Mr. Antonuk's resolution of this issue.<sup>32</sup> Mr. Antonuk found "AT&T's argument . . . without foundation."<sup>33</sup> As a result, the Staff refused to strike Qwest's proposed SGAT provision.

AT&T is now requesting that the Staff and/or Qwest clarify how Qwest will determine whether a CLEC is in violation of this usage restriction. As AT&T argued in its brief, it is not possible to apply the test set forth in Section 9.7.2.9 to unbundled dark fiber.<sup>34</sup> The FCC developed a test for the EEL, that is reflected in this section of Qwest's SGAT, to determine how much of the EEL was to be used for local traffic. The test is designed to apply to a single end user. Dark fiber, however, is typically used for multiple end users.<sup>35</sup> The FCC's test cannot be applied to dark fiber and, by implicating such test, Qwest's language is nonsensical. Neither Qwest in its brief, nor the Staff in the Report, explained how the usage restriction would be applied to determine when a purported loop dark fiber combination would run afoul of this restriction.

Without this clarification, no CLEC can be assured how this usage restriction will be applied. A CLEC's obvious concern is to make sure that the restriction is not being applied to limit the CLEC's lawful use.

#### **IV. LINE SHARING**

AT&T attaches to these comments the Arbitrator's Award ordered by the Public

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<sup>32</sup> Final Report at p. 51.

<sup>33</sup> Multi-State Report at p. 57.

<sup>34</sup> AT&T Dark Fiber Brief at p. 13.

<sup>35</sup> AZ Transcript 2/01/01 at pp. 1458 - 1459.

Utilities Commission of the State of Texas ("Arbitrator's Award").<sup>36</sup> This Arbitrator's Award addresses many of the same issues addressed by the CLECs in this proceeding. The Arbitrator's Award reached directly contrary resolution of some of these issues. AT&T requests that the Staff review this new persuasive authority and reconsider its draft report.

Specifically, the Arbitration Award provides sound and compelling reasons for not accepting Qwest's arguments regarding provisioning of splitters, collocation issues, and, importantly, availability of and access to fiber loop facilities.

**A. Tying Qwest Data Service to Voice Service**

The Report maintains that "Qwest should not be found in compliance with Section 271 requirements as long as it maintains its current policy of restricting its own Megabit or xDSL customers from taking service from another voice provider through line sharing. ."<sup>37</sup> AT&T anticipates that Qwest will necessarily modify its policy regarding the provisioning of xDSL services and develop a new "product offering" in order to satisfy the concerns expressed in the Report. Upon development of such product, Qwest should propose new contract language and afford the parties an opportunity to not only to review it to confirm compliance with the Report's standards, but also to confirm that it is workable.

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<sup>36</sup> *Petition Of IP Communications Corporation To Establish Expedited Public Utility Commission Of Texas Oversight Concerning Line Sharing Issues*, Arbitration Award, Docket 22168, *Petition Of Covad Communications Company And Rhythms Links, Inc. Against Southwestern Bell Telephone Company For Post-Interconnection Dispute Resolution And Arbitration Under The Telecommunications Act Of 1996 Regarding Rates, Terms, Conditions And Related Arrangements For Line Sharing*, Arbitration Award Docket 22469, Public Utilities Commission of Texas (Rel. June 13, 2001) (*Arbitration Award*). (Exhibit B)

<sup>37</sup> Final Report at p. 31.

## **B. Line Sharing over Fiber Loops**

AT&T and other CLECs argued that Qwest must provide line sharing over fiber loop facilities and sought to modify the SGAT to provide for specific access. The Report found that Qwest's proposed SGAT Section 9.4.1.1 adequately allows for line sharing over fiber loops.<sup>38</sup>

The Texas Arbitration Award specifically found that in facilities similar to those employed by Qwest, line sharing over fiber fed loops should be expressly required. More specifically, it found that such access met the FCC's necessary and impair standard.<sup>39</sup>

Although, as summarized in the Introduction to these Comments, AT&T reserves all rights with respect to subsequent discussion of the conclusions of the Report, the language proposed by Qwest appears not to comport fully with the Report. The Staff appears to have accepted Qwest's provision because it allows for all technically feasible forms of access. AT&T notes that Qwest's provision amounts to no more than a mere "paper promise" to afford access and that, as the record amply reflects, obtaining actual access from Qwest to any element entails an extensive resource- and time-intensive "productization process" which in itself is a significant impediment to access and competition. In principle, the resolution is unsatisfactory. Qwest's provision is cold comfort.

Despite the implications of the order, Qwest's SGAT Section 9.4.1.1 does not include any reference to "technical feasibility," merely technologies "that are identified." The section must be modified to be clear that this provision permits access to technically

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<sup>38</sup> Final Report at p. 30.

<sup>39</sup> *Arbitration Award*, pp. 69 - 74.

feasible methods of line sharing. Moreover, the section should be clear that the burden of demonstrating that a technology is not technically feasible should rest on Qwest.

More significantly, Qwest's SGAT Section 9.4.1.1, however, does not merely look to technical feasibility as the Report would suggest. The Section contains two requirements in addition to "technical feasibility." Section 9.4.1.1 provides that access to line sharing technologies will be permitted only where "Qwest has deployed such technology for its own use" and only where "Qwest is obligated by law to provide such access." Clearly Qwest's provision sets a higher standard than mere technical feasibility. In the first requirement, where Qwest requires a demonstration that Qwest deploys the technology in its own network, CLECs are consigned to merely keep pace with Qwest. This provision is a significant gating factor for new and innovative technologies. It makes clear that no CLEC will be able to exceed Qwest's own deployment.

The second requirement, which makes clear that Qwest must have a legal obligation to provide access to a certain line sharing technology, is at best a tautology. At worst, it mandates that all CLECs must seek a resolution that each form of technology sought to be employed for line sharing is explicitly ordered or required by some law. CLECs' experiences demonstrate clearly that Qwest will take the narrowest reading of the law. Line sharing would appear no different. Accepting this language will sentence all CLECs into seeking FCC or state commission approval for any technology desired to be implemented. Such a process will create needless delay and consign most line sharing "emerging services" back to the cocoon.

AT&T proposes that Qwest's Section 9.4.1.1 be modified to read as follows:

To the extent additional line sharing technologies and transport

mechanisms are identified, Qwest will allow CLECs to line share in that manner, provided, however, that (i) the rates, terms and conditions for line sharing may need to be amended and (ii) if Qwest demonstrates that such line sharing method is not technically feasible, Qwest need not afford the access identified.

### **C. Provisioning Interval**

Certain CLECs argued that Qwest proposed 5-day provisioning interval for line sharing was inadequate. Qwest had subsequently offered a three-day provisioning interval. The Report concluded that the interval was appropriate, but encouraged Qwest to adopt a two-day interval.<sup>40</sup>

AT&T suggests that the Staff's encouragement to work toward abbreviated intervals be converted into an express provision to be included in the SGAT. AT&T is concerned that without such inclusion in the SGAT or without a very clear Commission action acknowledging these conditions and allowing for enforcement, they will have little effect. Moreover, unless CLECs can be assured of a means of expeditious enforcement, their competitive service may be swept away.

Accordingly, AT&T proposes the addition of the following language for inclusion in the SGAT (which may be appropriate to add as a note to the provisioning interval found in Qwest's interval exhibit): "On or before January 1, 2002, Qwest shall file with the Commission either an amendment to this SGAT abbreviating this interval to no greater than two days or a statement setting forth its reasons for not filing such an amendment."

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<sup>40</sup> Final Report at p. 34.

## **V. PACKET SWITCHING**

### **A. Spare Copper Loops**

AT&T asks the Arizona staff to review the report of the Arbitration Award of the Public Utilities Commission of Texas ("Arbitration Award").<sup>41</sup> In the Arbitration Award, the arbitrators considered arguments that are very similar, if not identical to the those presented here. In Texas, the arbitrators were not persuaded by the evidence that there are spare copper loops capable of supporting xDSL services the CLECs seek to offer. In some places the arbitrators recognized that spare copper will be available. In others, the rollout of the ILEC's facilities might free up additional copper plant. However, the arbitrators believed that the evidence in the record supports the finding that without access to packet switching, CLECs will be impaired. Critical to the Texas arbitrator's decision was the fact that where spare copper is in fact available, the quality of service generally between the different distribution methods is somewhat disparate, especially in distance sensitive applications such as line sharing. This disparity does not meet the condition that spare copper loops should be able to "offer the same level of quality for advanced services."

CLECs posited the same arguments here. In light of this new and persuasive authority, AT&T respectfully asks the Staff to reconsider its order.

### **B. ICB Pricing**

AT&T requests that the Report clarify the position taken with respect to ICB

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<sup>41</sup> *Petition Of IP Communications Corporation To Establish Expedited Public Utility Commission Of Texas Oversight Concerning Line Sharing Issues*, Arbitration Award, Docket 22168, *Petition Of Covad Communications Company And Rhythms Links, Inc. Against Southwestern Bell Telephone Company For Post-Interconnection Dispute Resolution And Arbitration Under The Telecommunications Act Of 1996 Regarding Rates, Terms, Conditions And Related Arrangements For Line Sharing*, Arbitration Award Docket 22469, Public Utilities Commission of Texas (Rel. June 13, 2001). (Exhibit B)

pricing generally and, specifically, with respect to ICB pricing for Packet Switching.

AT&T continues to maintain that development of specific prices for the packet switching UNE is essential for satisfaction of its 271 Checklist Items. Although AT&T shares the aspiration that Qwest define its prices for Packet Switching as soon as possible, the Report does not make clear what consequences would result if such prices are not developed or are otherwise inadequate before Commission action is required.

**C. Unbundling Conditions as a Prerequisite to Ordering**

The Report mandates a modification to the SGAT to make clear that "Qwest should be required to respond to DSLAM collocation orders and packet switching orders in parallel" to eliminate the sequential ordering requirement.<sup>42</sup> AT&T anticipates that Qwest will make some sort of compliance filing and specifically reserves the right to review its proposal to conform to the Report.

Respectfully submitted on this 19th day of July 2001.

**AT&T COMMUNICATIONS OF THE  
MOUNTAIN STATES, INC. AND TCG  
PHOENIX**

By: 

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<sup>42</sup> Final Report at pp. 57 - 58.





June 28, 2001

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RE: Resolution of Emerging Services Issues in the Seven-State Proceeding

Dear Maureen:

As you are aware, the state commissions of Idaho, Iowa, Montana, New Mexico, North Dakota, Utah, and Wyoming have established a joint proceeding to determine Qwest's compliance with Section 271 of the Telecommunication Act. The Facilitator of those proceedings, Mr. John Antonuk, has now released his report on emerging services. The Report concludes that, with certain modifications to Qwest's SGAT, and subject to the results of OSS testing, Qwest can be deemed in compliance with the applicable emerging services requirements.

The Report resolves most of the same issues that have been at impasse in Arizona. In light of the Facilitator's extensive fact-finding and thorough consideration of the issues, Qwest respectfully suggests that the ACC adopt the Facilitator's Report in its entirety.

Qwest was able to accommodate the CLECs and commission staffs on a majority of the issues they had raised, and the parties were able reach consensus on 28 of the 50 issues originally in dispute even before final briefing. The Facilitator's resolution of the remaining disputed issues was careful and even-handed. Even though many of the disputed issues were resolved against Qwest, Qwest still believes that, on the whole, the Report reflects a well-thought-out effort to balance the interests of incumbents and competitors. Qwest has therefore recommended that each of the participating states adopt the Report's recommendations in their entirety. Several state commission staffs have done the same.

Qwest respectfully suggests that the ACC likewise follow the Facilitator's resolution of the emerging services impasse issues. Doing so would avoid the need for further face-to-face workshops, saving the resources of the Commission and the parties. It would also help ensure that Qwest and its competitors face interconnection terms and requirements that are consistent across the fourteen-state region.

I have enclosed a copy of the Facilitator's Report for your convenience.

Very truly yours,

**Chuck Steese**

Chuck Steese

Corporate Counsel

cc: Parties of Record



**DOCKET NO. 22168**

<b>PETITION OF IP COMMUNICATIONS</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>CORPORATION TO ESTABLISH</b>	<b>§</b>	
<b>EXPEDITED PUBLIC UTILITY</b>	<b>§</b>	<b>OF TEXAS</b>
<b>COMMISSION OF TEXAS</b>	<b>§</b>	
<b>OVERSIGHT CONCERNING LINE</b>	<b>§</b>	
<b>SHARING ISSUES</b>	<b>§</b>	

**DOCKET NO. 22469**

<b>PETITION OF COVAD</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>COMMUNICATIONS COMPANY AND</b>	<b>§</b>	
<b>RHYTHMS LINKS, INC. AGAINST</b>	<b>§</b>	<b>OF TEXAS</b>
<b>SOUTHWESTERN BELL TELEPHONE</b>	<b>§</b>	
<b>COMPANY FOR POST-</b>	<b>§</b>	
<b>INTERCONNECTION DISPUTE</b>	<b>§</b>	
<b>RESOLUTION AND ARBITRATION</b>	<b>§</b>	
<b>UNDER THE</b>	<b>§</b>	
<b>TELECOMMUNICATIONS ACT OF</b>	<b>§</b>	
<b>1996 REGARDING RATES, TERMS,</b>	<b>§</b>	
<b>CONDITIONS AND RELATED</b>	<b>§</b>	
<b>ARRANGEMENTS FOR LINE</b>	<b>§</b>	
<b>SHARING</b>	<b>§</b>	

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**DOCKET NO. 22168**

<b>PETITION OF IP COMMUNICATIONS</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>CORPORATION TO ESTABLISH</b>	<b>§</b>	
<b>EXPEDITED PUBLIC UTILITY</b>	<b>§</b>	<b>OF TEXAS</b>
<b>COMMISSION OF TEXAS</b>	<b>§</b>	
<b>OVERSIGHT CONCERNING LINE</b>	<b>§</b>	
<b>SHARING ISSUES</b>	<b>§</b>	

**DOCKET NO. 22469**

<b>PETITION OF COVAD</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>COMMUNICATIONS COMPANY AND</b>	<b>§</b>	
<b>RHYTHMS LINKS, INC. AGAINST</b>	<b>§</b>	<b>OF TEXAS</b>
<b>SOUTHWESTERN BELL TELEPHONE</b>	<b>§</b>	
<b>COMPANY FOR POST-</b>	<b>§</b>	
<b>INTERCONNECTION DISPUTE</b>	<b>§</b>	
<b>RESOLUTION AND ARBITRATION</b>	<b>§</b>	
<b>UNDER THE</b>	<b>§</b>	
<b>TELECOMMUNICATIONS ACT OF</b>	<b>§</b>	
<b>1996 REGARDING RATES, TERMS,</b>	<b>§</b>	
<b>CONDITIONS AND RELATED</b>	<b>§</b>	
<b>ARRANGEMENTS FOR LINE</b>	<b>§</b>	
<b>SHARING</b>	<b>§</b>	

**I. SUMMARY OF PROCEEDINGS****BACKGROUND**

On February 25, 2000, IP Communications Corporation (IP) filed a petition to establish expedited commission oversight concerning line sharing.<sup>1</sup> On March 17, 2000, Southwestern Bell Telephone Company (SWBT) filed a motion to dismiss IP's motion, alleging that IP had not sufficiently stated grounds for the relief sought. On April 28, 2000, Covad Communications Company (Covad) and Rhythms Links, Inc. (Rhythms) jointly filed a complaint against SWBT

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<sup>1</sup> Docket No. 22168.

and GTE Southwest Inc. (GTE)<sup>2</sup> for post-interconnection agreement dispute resolution and arbitration under the Federal Telecommunications Act of 1996 (FTA).<sup>3</sup> In addition, the parties requested interim relief.<sup>4</sup> On May 3, 2000, SWBT filed a conditional withdrawal of its motion to dismiss in Docket No. 22168, if appropriate notice was given to all competitive local exchange carriers (CLECs) and all issues regarding line sharing were addressed in this consolidated docket. GTE likewise agreed to participate in a generic docket to address line sharing issues.<sup>5</sup> Dockets Nos. 22168 and 22469 were thereby consolidated, and notice was sent to all certificated local service providers. AT&T Communications of Texas, L.P., MCI WorldCom Communications, Inc., Sage Telecom, Inc., Northpoint Communications, Inc., and Vectris Telecom, Inc., filed motions to intervene. ConnectSouth Communications, Inc. filed comments in the docket but did not seek intervention status. The scope of the proceeding was limited to issues regarding line sharing, defined by the Federal Communications Commission (FCC), where an incumbent local exchange carrier (ILEC) is the voice provider and a CLEC is the data provider over the same loop. In other words, line sharing generally describes the ability of two different service providers to offer two services over the same line, with each provider employing different frequencies to transport voice and data over the that line.<sup>6</sup>

On December 9, 1999, the FCC released the *Line Sharing Order*. Paragraph 160 of the Order reads:

In addition, as explained in more detail below, we strongly encourage the states to issue interim arbitration awards setting out the necessary rates, terms, and conditions for access to this unbundled network element, with any unresolved issues subject to true-up when the state commission completes its arbitration. We urge states to issue these awards as quickly as possible after a party petitions the state for arbitration under section 252(b)(1) so that competitive carriers are

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<sup>2</sup> Docket No. 22469.

<sup>3</sup> Pub. L. 104-104, 110 Stat. 56, codified as amended in scattered sections of 15 and 47 U.S.C. (FTA).

<sup>4</sup> Complaint of Covad Communications Company and Rhythms Links, Inc. against Southwestern Bell Telephone.

<sup>5</sup> Tr. Prehearing Conference at 10 (May 4, 2000).

<sup>6</sup> *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 98-147, CC Docket No. 96-98, Third Report and Order in CC Docket No. 98-0147, Fourth Report and Order in CC Docket 96-98 (rel. Dec. 9, 1999) ("*Line Sharing Order*") ¶ 17 (footnote omitted).

actually able to begin providing advanced services on a shared loop within 180 days of release of this order.

Because of the FCC's directive to set interim rates to allow quick implementation of the line sharing order, this case was handled in phases. Phase I addressed issues necessary for interim relief. Phase II addresses the majority of remaining issues for the final award. The parties agreed that certain costing and pricing issues, most notably, rates for line sharing via fiber fed DLC will be addressed subsequent to the issuance of this Award.<sup>7</sup> The Interim Award resulting from Phase I was filed on June 6, 2000. Subsequently, Sprint Communications Company, L.P. (Sprint) was granted intervention and Covad withdrew from this proceeding.<sup>8</sup> In addition, in response to SWBT's Motion to Strike, the Arbitrators ruled that issues regarding SWBT's "Project Pronto" should be addressed in this docket, as the issues are inextricably intertwined, but that issues regarding line splitting should be addressed in Docket No. 22315 or its successor docket.<sup>9</sup> Furthermore, the Arbitrators granted a severance of the issues related to Verizon to a separate docket because the parties agreed that additional discovery was necessary before proceeding.<sup>10</sup> Finally, the Arbitrators granted IP's Motion to Dismiss with Prejudice as a party to this docket.<sup>11</sup> Therefore, the parties participating in proceeding include: Rhythms, WCOM, AT&T, Sage, Sprint, and SWBT. The Hearing on the Merits was held November 29 through December 1, 2000. Additional discovery issues were addressed after the hearing, culminating in parties submitting late-filed exhibits. Parties filed post-hearing briefs on February 9, 2001, and post-hearing reply briefs on March 1, 2001.

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<sup>7</sup> Order No. 13 (October 19, 2000).

<sup>8</sup> Order No. 8 (August 25, 2000).

<sup>9</sup> Prehearing Conf. Tr. (August 31, 2000); Order No. 11 (October 16, 2000).

<sup>10</sup> Prehearing Conf. Tr. (November 27, 2000); Prehearing Conf. Tr. (December 6, 2000); Order No. 22 (January 11, 2001) (No party opposed the severance and these issues with respect to Verizon are now being addressed in Docket No. 23537).

<sup>11</sup> IP filed a Motion to Withdraw with Prejudice on May 8, 2001. This motion was filed after the introduction of all evidence, the hearing on the merits, and submission of post-hearing briefs. The Arbitrators granted IP's motion with prejudice on July 12, 2001, as no parties opposed the motion. The Arbitrators note that because of the timing of the motion, IP's positions, as advocated at the hearing and in post-hearing briefs, remain in this Award. However, as IP is no longer a party to this proceeding, the Arbitrators have not considered or relied upon any evidence put forth by IP in our rulings in this Award.

This arbitration proceeding has been conducted in accordance with P.U.C. PROC. R. 22.301 - 22.310. The scope of the issues addressed in this arbitration proceeding is limited to the decision point list (DPL)<sup>12</sup> developed by the Parties.

### **RULING ON DISPUTED ISSUES**

The issues in the joint DPL are generally grouped into the following six areas: (1) splitter and cabling; (2) fiber-fed digital loop carrier; (3) pre-ordering, ordering, and provisioning; (4) repair and maintenance; (5) costing and pricing; and (6) miscellaneous disputed issues. In this Award, each DPL issue is restated, along with a summary of the Parties' positions, followed by the Arbitrators' ruling. As required by P.U.C. PROC. R. 22.305(s), an explanation of the Arbitrators' rationale for each of the rulings is provided.

The Arbitrators find that the following decisions and rates, terms and conditions imposed on the Parties by this Award meet the requirements of FTA § 251 and P.U.C. PROC. R. 22.301-22.310 and any applicable regulation prescribed by the FCC pursuant to FTA § 251. This Award establishes terms and conditions, including rates, for interconnection, services, and network elements according to the standards set forth in FTA § 252(d) and the *Line Sharing Order*. A schedule for implementation of the rates, terms and conditions of this Award is set forth in Section XII.

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<sup>12</sup> Decision Point List Matrix (DPL) (November 17, 2000).

## II. EXECUTIVE SUMMARY

### SPLITTER AND CABLING ISSUES

The Arbitrators find that SWBT is required to continue providing ILEC-owned splitters for purposes of line sharing, based upon the Commission's prior determination in Docket No. 22315 that the splitter is part of the loop unbundled network element (UNE). The Arbitrators adopt that decision, which finds that the full features, functions, and capabilities of the loop includes the splitter; thus, SWBT's obligation to provide the splitter remains. The Arbitrators agree with SWBT, however, that splitters should continue to be provisioned on a line-at-a-time basis. The Arbitrators are not persuaded that the CLECs' proposal to provision on a shelf-at-time is necessary or more efficient than the line-at-a-time process. Further, the shelf-at-a-time proposal may cause underutilization, frame exhaust, and unnecessary expense for SWBT.

The Arbitrators find that it is reasonable for SWBT to place the SWBT-owned splitter in the Common Collocation Area, rather than mandating that SWBT place the splitter on the main distribution frame (MDF) or within close proximity to the MDF. The Arbitrators are persuaded that test access for CLECs, provided by locating the splitter in the common area, is vitally important, and that CLEC access to the MDF for testing and maintenance is unnecessary and problematic. In addition, the Arbitrators are not persuaded that any additional length of cabling, triggered by placing the splitter in the Common Collocation Area rather than on the MDF, causes service to be affected. Finally, the Collocation Tariff provides parties with augment and installation time frames that are reasonable and have previously been approved by the Commission.

### FIBER-FED DIGITAL LOOP CARRIER ISSUES

The Arbitrators find that SWBT must provide access to "Project Pronto" functionality (e.g. the loop unbundled element) to CLECs on a nondiscriminatory basis. The Arbitrators find that SWBT should not be relieved of its existing unbundling obligations merely by the way in which it has chosen to design the network. The Arbitrators find that whether the transmission

facility is a "home-run" copper loop or a loop that has been enhanced by introducing fiber into the loop and utilizes a "Project Pronto" remote terminal, the loop is still a UNE loop, as defined by the FCC, with the exception of associated packet switching functionality. Although the Arbitrators decline to find that a digital subscriber line access multiplexer (DSLAM) is included within the full features, functions, and capabilities of the loop, the Arbitrators find that the network architecture of Project Pronto meets the FCC's four-part criteria for unbundling packet switching and, therefore, SWBT must provide CLECs with access to the packet switching components.

The Arbitrators decline at this time to order SWBT to allow CLECs to collocate individual line cards within the "Project Pronto" remote terminal, as the Arbitrators find that such collocation is problematic from the standpoint of inventory, testing, maintenance, and capacity management. As technology evolves this capability may become a viable alternative in the future. However, the Arbitrators do not believe at this time that CLECs will be impaired if individual line card "collocation" is not ordered. Finally, the Arbitrators are persuaded that without access to bandwidth as low as DS-1 levels, CLECs will be unable to effectively compete. The Arbitrators find that SWBT's position of only offering higher levels of capacity creates a barrier to entry and does not comport with the evidence that shows it is technically feasible to provision DS-1 levels.

#### **PREORDERING, ORDERING, AND PROVISIONING ISSUES**

The Arbitrators find that CLECs are entitled to all information contained within SWBT's systems for purposes of loop qualification information. The Arbitrators believe that this is consistent with the requirements of the *UNE Remand Order* and the Commission's findings in the xDSL Arbitration. However, the Arbitrators reject the notion that SWBT must allow CLECs "direct" access to back-end systems. Gateways and interfaces have been developed to uniformly provide information to the CLECs; the Arbitrators do not believe that the method of access should be modified. However, the Arbitrators find that SWBT is not currently providing CLECs all information contained within SWBT's databases or systems on a non-discriminatory basis. The Arbitrators find that SWBT's voluntary commitment to allow CLECs to participate in an audit of backend systems will provide CLECs with certainty with respect to the information that

should be provided. The Arbitrators, however, do include certain parameters that are necessary to ensure that systems unique to Texas are tested.

The Arbitrators find that the same provisioning interval as established in the *Interim Award* shall apply on a permanent basis for line sharing (e.g. three days or parity with SWBT or its data affiliate, whichever is less for loops without conditioning, and ten days or parity with SWBT or its data affiliate, whichever is less for loops with conditioning). The Arbitrators find that this time frame is reasonable and it balances SWBT's concerns regarding the volume of orders SWBT must process and the CLECs' desire for rapid provisioning. The Arbitrators find no reason to modify the intervals established by the *Interim Award*, which provide CLECs a meaningful opportunity to compete. Based on this rationale, the Arbitrators also concluded that a three day interval is appropriate for CLEC to CLEC transfers of line-shared service.

#### **MAINTENANCE AND REPAIR ISSUES**

The Arbitrators find that SWBT provides appropriate test access for CLECs as required by the *Line Sharing Order*. SWBT allows CLECs test access at the splitter location, and SWBT further allows CLECs to perform several tests, including the ability to perform the Automatic Numbering Identification (ANI), Mechanized Loop Test (MLT) and high frequency test. In addition, the Arbitrators believe that SWBT's Turn-up test, developed collaboratively in compliance with the *Interim Award* in this proceeding, lays sufficient groundwork for resolution of installations in the line sharing context. The Arbitrators believe that the Turn-up test is minimally acceptable and additional modifications should continue through collaborative efforts.

#### **COSTING AND PRICING ISSUES**

The Arbitrators find that the cost for the high frequency portion of the loop (HFPL) should be set at \$0, because SWBT did not provide evidence sufficient to support a HFPL rate of one-half the UNE loop rate. The Arbitrators believe that allowing a HFPL rate of one-half the UNE loop rate would allow SWBT to double recover (e.g. the entire loop cost from the voice customer and half the loop cost from the data provider). Because SWBT is already recovering its costs in the loop rates set previously by this Commission, any rate other than \$0 would require a total review of the established UNE loop rates.

In addition, the Arbitrators find that SWBT should be able to recover its OSS modifications on a recurring basis pursuant to the *Line Sharing Order*. However, the Arbitrators find that SWBT has not appropriately supported its costs, nor has SWBT presented clear evidence that the proposed charges are solely attributable to line sharing upgrades. Therefore, the Arbitrators find that the interim rate shall continue and SWBT shall fully support its proposed costs in the final pricing phase of this proceeding. Also, the Arbitrators adopt SWBT's proposed costs, as modified, for the use of an SWBT-owned splitter, as these rates are reasonable and fully supported by the evidence. Finally, the recurring and nonrecurring rates for cross-connects are based on placement of the splitter in the common collocation area. The Arbitrators adopt a non-recurring charge of \$20.62 initial and \$19.74 subsequent, as these rates were previously adopted by the Commission. Finally, the Arbitrators adopt a recurring rate of \$0.20, developed by AT&T, for the recurring portion of the cross-connect charges.

### III. RELEVANT FEDERAL PROCEEDINGS

#### LINE SHARING ORDER

The *Line Sharing Order* sets forth obligations of ILECs to provide line sharing to CLECs as an unbundled network element. The FCC found that ILECs must provide unbundled access to the high frequency portion of the loop so that carriers may use those frequencies to provide xDSL services and provide access to OSS necessary to support non-discriminatory pre-ordering, ordering, provisioning, maintenance and testing, and billing for CLECs.<sup>13</sup> The FCC determined that access to OSS is critical to a CLEC's ability to compete and that if a CLEC was, "unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for UNEs in substantially the same time an manner as ILECs, CLECs would be severely disadvantaged, if not precluded altogether, from fairly competing."<sup>14</sup> The Order specifically addresses the situation where a competitive carrier seeks to line share over a copper loop, but does not address line sharing over fiber-fed DLC systems, such as SWBT's Project Pronto. However, the FCC made clear that, "states are free to impose additional, pro-competitive requirements consistent with the national framework established in this order."<sup>15</sup>

#### LINE SHARING RECONSIDERATION ORDER

On January 19, 2001, the FCC released the *Line Sharing Reconsideration Order* clarifying that even where an incumbent has deployed architectures using fiber-fed digital loop carriers, such as SWBT's "Project Pronto", an ILEC continues to have an obligation to provide line sharing.<sup>16</sup> The FCC clarified that "the requirement to provide line sharing applies to entire loop, even where the incumbent has deployed fiber in the loop (e.g. where the loop is served by a

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<sup>13</sup> *Line Sharing Order* ¶ 19, 93.

<sup>14</sup> *Line Sharing Order* ¶ 172.

<sup>15</sup> *Line Sharing Order* ¶ 223.

<sup>16</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 01-26 (rel. January 19, 2001) ("*Line Sharing Reconsideration Order*") ¶¶ 9-10.

remote terminal).”<sup>17</sup> Furthermore, the FCC indicated that, “when [the FCC] concluded in the *Line Sharing Order* that incumbents must provide unbundled access to the high frequency portion of the loop at the remote terminal as well as the central office, [the FCC] did not intend to limit competitive LECs’ access to the fiber feeder subloops for line sharing.”<sup>18</sup>

### UNE REMAND ORDER

The FCC set forth unbundling requirements in the *UNE Remand Order*, “to facilitate the rapid and efficient deployment of all telecommunications services, including advanced services.”<sup>19</sup> Under the *UNE Remand Order* ILECs are required to provide CLECs with non-discriminatory access to the established UNEs and OSS. ILECs must provide access to all loop provisioning information contained in any backend systems, databases or records that may be accessed by any ILEC employee.<sup>20</sup> The relevant inquiry is not “whether the retail arm of the incumbent has access to the underlying loop qualification information, but rather whether such information exists anywhere within the incumbent’s back office and can be accessed by any of the incumbent LEC’s personnel.”<sup>21</sup>

### SBC/AMERITECH MERGER CONDITIONS AND PRONTO WAIVER ORDER

SWBT is subject to a set of conditions put in place by the FCC as part of its approval of SBC’s merger with Ameritech.<sup>22</sup> The FCC’s merger conditions were intended to uphold the FCC’s statutory obligation under the Act to open local telecommunications networks to competition by attempting to alleviate the potential competitive harm associated with the

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<sup>17</sup> *Id.* at 9.

<sup>18</sup> *Id.*

<sup>19</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Notice of Proposed Rulemaking, 15 FCC Rcd. 3696 (rel. Nov. 5, 1999) (“*UNE Remand Order*”) ¶ 14.

<sup>20</sup> *Id.* ¶ 430.

<sup>21</sup> *Id.*

<sup>22</sup> *See In the Matter of Ameritech Corp. and SBC Communications, Inc. For Consent to Transfer Control of Corporation Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission’s Rules*, Memorandum Opinion and Order, CC Docket No. 98-141 (rel. Oct. 8, 1999) (“*Merger Order*”).

SBC/Ameritech merger.<sup>23</sup> On February 15, 2000, SBC filed a letter requesting a waiver of the Merger Order to allow the ILEC to own two pieces of equipment necessary for the Project Pronto architecture: ADLU Line cards and "Optical Concentration Devices" ("OCDs").<sup>24</sup> In response, the FCC granted the waiver request, thereby allowing ILECs SWBT to own both pieces of equipment. The FCC expressly limited the scope of the Waiver Order to the question of SBC ILECs' ownership of certain advanced services equipment otherwise prohibited by the order approving the SBC/Ameritech merger.<sup>25</sup>

Nothing in this Order supersedes SBC's obligations to comply with all applicable Commission orders and rules, now and in the future. We stress again that this Order is confined only to the *Merger Conditions*, and so does not constitute any finding or determination with respect to SBC's compliance with section 251 or any other provision of the Act, or SBC's section 251 obligations regarding its Broadband Offering.<sup>26</sup>

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<sup>23</sup> *Merger Order*, ¶ 357.

<sup>24</sup> *In the Matter of Ameritech Corp. and SBC Communications, Inc. For Consent to Transfer Control of Corporation Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, Second Memorandum Opinion and Order, CC Docket No. 98-141, ¶ 43-44 (rel. Sept. 8, 2000) ("Pronto Waiver Order") ¶ 5.

<sup>25</sup> *Id.* ¶ 7.

<sup>26</sup> *Id.* ¶ 9.

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#### IV. SPLITTER AND CABLING ISSUES

##### DPL ISSUES 1-10

### 1. Should SWBT be required to submit forecasts of anticipated use of ILEC-owned splitters?

#### *CLECs' Position*

IP and Sage support requiring CLECs to submit forecasts for anticipated use of ILEC-owned splitters.<sup>27</sup> According to IP and Sage, submitting non-binding forecasts will facilitate planning not only for SWBT, but also for the CLECs that intend to purchase those splitters.<sup>28</sup> IP and Sage, however, prefer to have an opportunity to update the splitter forecasts.<sup>29</sup> WCOM generally supports IP's and Sage's position, but states that the requirement to submit forecasts should be optional.<sup>30</sup> Conversely, Rhythms maintains that CLECs should not be required to submit forecasts for anticipated use of ILEC-owned splitters.<sup>31</sup>

#### *SWBT's Position*

SWBT asserts that all CLECs that will be requesting SWBT-owned splitters should provide semi-annual non-binding forecasts for anticipated use of the splitters. SWBT states that it will use the splitter forecasts to perform capacity management, which is necessary to ensure that splitter ports are available prior to exhaustion.<sup>32</sup> SWBT cautions that without these forecasts there might be a lack of facilities due to "unforeseen port exhaustion problems."<sup>33</sup>

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<sup>27</sup> IP and Sage Joint Post-Hearing Initial Brief "IP and Sage Initial Brief" at 8 (February 9, 2001).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Worldcom Post-Hearing Initial Brief "WCOM Initial Brief" at 6 (February 9, 2001).

<sup>31</sup> Rhythms Post-Hearing Initial Brief "Rhythms Initial Brief" at 13 (February 9, 2001).

<sup>32</sup> SWBT Ex. 12, Direct Testimony of Betty Schlackman "Schlackman Direct" at 23 (September 5, 2000).

<sup>33</sup> SWBT Post-Hearing Initial Brief "SWBT Initial Brief" at 35 (February 9, 2001).

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*Arbitrators' Decision*

The Arbitrators agree with SWBT that CLECs should provide forecasts for anticipated use of SWBT-owned splitters. Splitter forecasts will allow SWBT to plan ahead, perform capacity management, and ensure that splitter ports are available for requesting CLECs. SWBT's capacity management tool allows its engineers to provision, order, and install facilities prior to exhaustion.<sup>34</sup> Also, as SWBT notes, forecasts will allow SWBT to engineer its offices efficiently instead of developing plans every time a CLEC makes a request for splitters.<sup>35</sup> The Arbitrators find that without reliable forecasts, SWBT would have to rely on actual usage and expected demand when developing plans to augment splitter capacity.<sup>36</sup> Reliable forecasts will allow SWBT to take into account such things as market conditions, planned promotions and price cuts, prior to developing plans to augment splitters.<sup>37</sup>

In conclusion, the Arbitrators find that the forecasts will benefit both the ILEC and the CLEC. Therefore, CLECs that request SWBT-owned splitters shall provide non-binding splitter forecasts to SWBT on a semi-annual basis. In addition, if a CLEC changes its business plans such that it would impact its submitted forecasts dramatically, the Arbitrators encourage the CLECs to update their splitter forecasts with SWBT. CLECs shall use due diligence and exercise best practices when submitting forecasts on splitters. However, SWBT shall not penalize a CLEC in any manner for underutilization or overutilization of splitter ports beyond the submitted forecasts.

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<sup>34</sup> SWBT Ex. 13, Rebuttal Testimony of Betty Schlackman "Schlackman Rebuttal" at 18-19 (October 20, 2000).

<sup>35</sup> Ms. Schlackman indicates in her Rebuttal Testimony at 18-19 "It is important to note that SWBT's engineering plans are to equip offices on an annual basis, not re-visit an office 3 to 4 times in one year to augment splitter capacity."

<sup>36</sup> Schlackman Rebuttal at 19.

<sup>37</sup> *Id.* at 18-19.

2. Should SWBT be required to provide a menu of three splitter network configurations to address CLECs' differing business needs?
5. Should SWBT be required to continue offering and providing ILEC-owned splitters in all central offices for which the CLEC makes a request?
6. Should the ILECs be required to continue offering current splitter architectures and arrangements? (IP, et al. Issue No. 4)

#### *CLECs' Positions*

Rhythms, IP and Sage assert that the FCC line sharing regulations require ILECs to "provide to requesting carriers loop and splitter functionality to obtain access to the high frequency portion of the loop."<sup>38</sup> Rhythms, IP and Sage argue that the *Line Sharing Order* recognizes the distinction between an ILEC's right to control the splitter vis-à-vis its obligations to provide splitter functionality, and that SWBT must provide splitters even though it may decline to "maintain control."<sup>39</sup>

Rhythms, IP and Sage contend that SWBT's position that the splitter itself is not a UNE is irrelevant because the FTA and the FCC's rules require ILECs to provide not only UNEs, but also access to UNEs.<sup>40</sup> The CLECs note that, "non discriminatory access to network elements on an unbundled basis refers to both the physical or logical connections to the element and the element itself."<sup>41</sup> Rhythms, IP and Sage further add that the FCC defined access as "the means by which requesting carriers obtain an element's functionality in order to provide a telecommunications service."<sup>42</sup> Rhythms, IP and Sage explain that for the line sharing UNE the splitter is the access point at which the shared voice and data signal separate in the central office.

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<sup>38</sup> Rhythms Initial Brief at 14, citing 47 C.F.R. § 51.319(h)(4); IP and Sage Initial Brief at 11, citing 47 C.F.R. § 51.319(h)(4).

<sup>39</sup> Rhythms Initial Brief at 14-15; IP and Sage Brief at 11, citing ¶ 76 of the *Line Sharing Order* "In situations where a requesting carrier is obtaining access to the high frequency portion of the loop, the incumbent LEC may *maintain control* over the loop and splitter equipment and functions, and *shall provide to requesting carriers loop and splitter functionality* that is compatible with any transmission technology that the requesting carrier seeks to deploy using the high frequency portion of the loop." (emphasis added)

<sup>40</sup> Rhythms Initial Brief at 15-16, citing 47 U.S.C § 251 (c)(6); IP and Sage Initial Brief at 12.

<sup>41</sup> Rhythms Initial Brief at 16, and IP and Sage Initial Brief at 12-13, citing *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 96-325 at ¶ 312 (quoting 47 U.S.C § 251(c)(3) and § 269) (rel. August 8, 1996) ("*First Report and Order*").

<sup>42</sup> *Id.*

Without the splitter, they argue, CLECs cannot access the line sharing UNE. Therefore, Rhythms, IP and Sage believe that SWBT has a duty to provide splitters regardless of whether the splitter is a UNE.<sup>43</sup>

In addition, Rhythms, IP and Sage argue that SWBT's refusal to provide splitters violates FCC regulations and "best practices" rules. They assert that SWBT is required to provide "any technically feasible method of obtaining interconnection or access to unbundled network element at a particular point upon a request by a telecommunications carrier."<sup>44</sup> Rhythms, IP, and Sage conclude that SWBT has not proven by clear and convincing evidence that providing an ILEC-owned splitter is not technically feasible, and furthermore, by voluntarily agreeing to provide splitters SWBT has in fact admitted that the configuration is technically feasible.<sup>45</sup>

Furthermore, IP and Sage state that the Commission's recent decision in the *Line Splitting Arbitration* affirms the requirement that SWBT is required to provide splitter functionality.<sup>46</sup> In the *Line Splitting Arbitration*, the Commission confirmed that SWBT is obligated to provide stand-alone splitters to make the high frequency portion of the loop available to requesting carriers.<sup>47</sup> IP and Sage urge the Arbitrators to recognize the Commission's determination in the *Line Splitting Arbitration* and adopt a similar decision in this Arbitration as well.<sup>48</sup> In addition to its legal claims, Rhythms claims that different splitter vendors have differing levels of quality, features, and reliability and believes that CLECs should be able to designate the vendor from whom they desire the ILEC-owned splitters.<sup>49</sup> Rhythms

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<sup>43</sup> Rhythms Initial Brief at 16; IP and Sage Initial Brief at 12-13.

<sup>44</sup> Rhythms Initial Brief at 16-17, citing 47 C.F.R. § 57.321(a); IP and Sage Initial Brief at 13-14, citing 47 C.F.R. § 57.321(a).

<sup>45</sup> Rhythms Initial Brief at 17; IP and Sage Initial Brief at 14; (The CLECs also note that SBC, SWBT's parent company, contended before the FCC that the ILEC is required to both "provide and manage" the splitter.)

<sup>46</sup> IP and Sage Joint Post-Hearing Reply Brief "IP and Sage Reply Brief" at 9-10 (March 1, 2001), citing *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252 (b) of The Federal Telecommunications Act of 1996*, Docket No. 22315, "Line Splitting Arbitration" at 18-19 (March 14, 2001).

<sup>47</sup> *Line Splitting Arbitration* at 18-19.

<sup>48</sup> IP and Sage Reply Brief at 10.

<sup>49</sup> Rhythms Ex. 1, Direct Testimony of John Donovan "Donovan Direct" at 42, 46-47 (September 6, 2000).

adds that ILECs are less likely to explore cutting edge splitter technologies; therefore, CLECs should retain the option to provide their own splitters if they desire to do so.<sup>50</sup>

WCOM asserts that CLECs should have the option of using a CLEC-owned splitter or an ILEC-owned splitter. WCOM states that SWBT's position that it is not obligated to offer splitters is untenable, as the Commission has already ruled in the *Line Splitting Arbitration* that SWBT is required to provide a splitter for line splitting.<sup>51</sup> WCOM contends that SWBT's application of the "necessary" and "impair" standards to determine whether it should provide ILEC-owned splitters to CLECs is misplaced, and inapplicable, as the Commission has already made a determination that the splitter is part of the existing UNE, in this case, the local loop.<sup>52</sup> WCOM, therefore, concludes that SWBT is obligated to provide splitters for line sharing in the same manner as it is required to provide splitters for line splitting.<sup>53</sup>

AT&T asserts that requiring SWBT to provision splitters is necessary to efficiently achieve the objectives of line sharing and line splitting.<sup>54</sup> AT&T contends that this requirement is entirely consistent with prior decisions made at the FCC and the Commission.<sup>55</sup> AT&T states that the FCC has recognized that "for effective competition to develop as envisioned by Congress, competitors must have access to incumbent LEC facilities in a manner that allows them to provide the services they seek to offer...."<sup>56</sup> AT&T notes that in the *UNE Remand Order* the FCC held that, with the exception of DSLAMs, "the loop includes attached electronics."<sup>57</sup> AT&T maintains that the FCC defined the loop to include electronic equipment, because the functionality of the loop would be otherwise limited, and the definition of a "network element" not only includes facilities, but also the "features, functions, and capabilities" as well.<sup>58</sup> Therefore, AT&T believes that the splitter is part of a UNE loop as it constitutes "attached electronics," which are "inserted" into the loop to provide competitors the ability to make use of

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<sup>50</sup> *Id.* at 46-47.

<sup>51</sup> WorldCom Post-Hearing Reply Brief "WCOM Reply Brief" at 4-5 (March 1, 2001).

<sup>52</sup> *Id.* at 5.

<sup>53</sup> *Id.*

<sup>54</sup> AT&T Post-Hearing Initial Brief "AT&T Initial Brief" at 6-9 (February 9, 2001).

<sup>55</sup> *Id.*

<sup>56</sup> AT&T Initial Brief at 6, citing *UNE Remand Order* ¶ 13.

<sup>57</sup> *Id.* ¶ 175.

the full functions, features, and capabilities of the loop.<sup>59</sup> AT&T acknowledges that the FCC did not specifically rule on the issue of splitter ownership in the *Line Sharing Reconsideration Order*, but points out that the FCC made it clear that this issue is left for future consideration.<sup>60</sup>

### ***SWBT's Position***

SWBT asserts it will offer splitter functionality voluntarily, but has no legal obligation to continue doing so.<sup>61</sup> SWBT argues that the Commission should not place onerous conditions on SWBT's voluntary offering and that SWBT should have the choice to provide splitters.<sup>62</sup> SWBT supports its position by arguing that there is no support under current law to require it to provide splitters, the splitter is not part of the loop network, and the splitter is not a UNE.<sup>63</sup>

SWBT argues that in the *Texas 271 Order*, the FCC declined to exercise its legislative rulemaking authority under section 251(d)(2) to require ILECs to provide access to splitters and concluded that the ILECs have no obligation to provide splitters to CLECs.<sup>64</sup> SWBT emphasizes that the *Line Sharing Order* gave ILECs the option to provide splitters or to allow competitive LECs to purchase comparable splitters; therefore, that option should not change.<sup>65</sup> Because SWBT allows CLEC to purchase and use their own splitters, SWBT claims that it must not be compelled to provide splitters.<sup>66</sup>

Furthermore, SWBT emphasizes that it is required to unbundle and provision elements of its existing network.<sup>67</sup> SWBT explains that the splitter is installed only to enable a CLEC to engage in line sharing, and is, therefore, not part of its existing network. However, SWBT adds that, even if the splitter is considered a part of its network, it still does not meet the FTA's

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<sup>58</sup> *Id.*

<sup>59</sup> AT&T Initial Brief at 6-7.

<sup>60</sup> AT&T Initial Brief at 7, citing *Line Sharing Reconsideration Order*.

<sup>61</sup> SWBT Initial Brief at 16-20.

<sup>62</sup> *Id.* at 21-22.

<sup>63</sup> *Id.* at 16.

<sup>64</sup> *Id.* 17-18.

<sup>65</sup> *Id.* at 17, citing *Line Sharing Order* ¶¶ 146, 76.

<sup>66</sup> *Id.* at 18.

<sup>67</sup> *Id.* at 18-19.

“necessary” and “impair” standards.<sup>68</sup> SWBT points out that a CLEC would be impaired in its access to an element, only if “lack of access to the element materially diminishes a requesting carrier’s ability to provide the services it seeks to offer.”<sup>69</sup>

Finally, SWBT observes that in the *Interim Award* the Arbitrators recognized that there is no evidence to support CLECs’ claim that they would be “impaired” in their ability to provide line sharing due to the lack of ILEC-owned splitters.<sup>70</sup> The fact that some CLECs have been able to purchase and install their own splitters, SWBT argues, indicates that the CLECs have a “meaningful opportunity to compete” in the absence of ILEC-owned splitters.<sup>71</sup> Therefore, SWBT concludes that the CLECs have failed to establish that they would be “impaired” in the absence of ILEC-owned splitters.<sup>72</sup>

### ***Arbitrators’ Decision***

In addressing splitter ownership for the HPFL UNE, the FCC concluded in the *Line Sharing Order* that “the incumbent LECs must either provide splitters or allow competitive LECs to purchase comparable splitters as part of this new unbundled network.”<sup>73</sup> Subsequently, in the *Interim Award*, the Arbitrators indicated that “the most reasonable interpretation of the *Line Sharing Order*, based on the evidence presented in the interim phase, is that the ILECs can either provide CLECs with the splitter equipment or allow CLECs to use their own splitter equipment.”<sup>74</sup>

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<sup>68</sup> *Id.* at 19.

<sup>69</sup> SWBT Initial Brief at 19-20, citing *UNE Remand Order* ¶ 51.

<sup>70</sup> SWBT Initial Brief at 20-21, citing Docket No. 22168, *Petition of IP Communications Corporation to Establish Public Utility Commission of Texas Oversight Concerning Line Sharing Issues* and Docket No. 22469, *Complaint of Covad Communications and Rhythms, Inc. against Southwestern Bell Telephone Company Inc. for Post-Interconnection Agreement Dispute Resolution and Arbitration Under the Telecommunications Act of 1996 Regarding, Rates, Terms, Conditions and Related Arrangements for Line Sharing*, “Interim Award” at 11 (June 6, 2000).

<sup>71</sup> SWBT Initial Brief at 21.

<sup>72</sup> *Id.*

<sup>73</sup> *Line Sharing Order* ¶ 146.

<sup>74</sup> *Interim Award* at 8.

However, on January 19, 2001, the FCC issued its *Line Sharing Reconsideration Order*.<sup>75</sup> Although the Order did not resolve the issue of splitter ownership, the FCC acknowledged that an open question remains as to whether electronics attached to the loop includes equipment like the splitter.<sup>76</sup> The FCC stated that it intends to address the splitter issue as part of its rulemaking proceedings.<sup>77</sup> The Arbitrators also noted in the *Interim Award* that we, “expect to consider this issue [splitter deployment] stringently in the permanent phase.”<sup>78</sup> In addition, the Arbitrators also indicated that “the findings in the interim phase in no way preclude a different outcome in the permanent proceeding.”<sup>79</sup> Therefore, we believe an open issue remains regarding SWBT’s requirement to provide SWBT-owned splitters.

Although, SWBT asserts that the CLECs have failed to substantiate that they are “impaired” without access to an ILEC-owned splitter, the Arbitrators need not address that point. On February 8, 2001, the Commission ruled in the *Line Splitting Arbitration* that the splitter is part of the loop.<sup>80</sup> The Arbitrators in that proceeding were posed with a similar question of whether SWBT must provide splitters in a line splitting context, when the voice provider is someone other than the incumbent. In the *Line Splitting Arbitration*, the Arbitrators concluded that:

[The Arbitrators] agree with AT&T that it is purchasing all of the loop including the low and high frequency spectrum portion of the loop when it purchases the unbundled loop in combination with the switch port or the unbundled network element platform (UNE-P). As noted by AT&T, in the FCC’s *Line Sharing Order* the FCC defined the high frequency loop as a capability of the UNE loop. In order to gain access to the high frequency portion of the UNE loop, line splitting is required. Such line splitting is accomplished by means of passive electronic equipment referred to as splitters. Although, as noted by SWBT, the FCC has to date has not required ILECs to provide the splitters in either a line sharing or line splitting context, the Arbitrators believe that Commission has the authority to do so on this record. The FCC has clearly stated that its requirements are the minimum necessary, and that state commissions are free to establish additional

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<sup>75</sup> *Line Sharing Reconsideration Order* ¶ 25.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Interim Award* at 11-12.

<sup>79</sup> *Id.*

<sup>80</sup> *Line Splitting Arbitration* at 18-19.

requirements, beyond those established by the FCC, where consistent.... The Arbitrators, therefore, believe on this record that it is sound public policy to require SWBT to provide AT&T with a UNE loop that is fully capable of supporting any xDSL service.<sup>81</sup>

The Arbitrators find that it would not be sound public policy to require SWBT to provide splitters in the line splitting context, and not in the line sharing context. Such a ruling has the possibility to favor one type of arrangement over the other, line splitting over line sharing. The Arbitrators find that in line sharing, just as in line splitting, in order to gain access to the high frequency portion of a UNE loop, a splitter is required. In both instances, the transmission path between the end user's premises and the central office is shared by two services, the low frequency voice service and the high frequency xDSL service. Both use similar technologies to provide the voice and xDSL service over the same line to the end user. In fact, by altering the wiring within the central office, a line-shared service can be configured for line splitting and vice-versa. Therefore, the Arbitrators adopt the Commission's earlier ruling that the splitter is part of the attached electronics of the loop unbundled network element and require SWBT to provide splitters in the line sharing context as well.

The Arbitrators acknowledge that in the line splitting scenario a CLEC purchases the entire loop, whereas in line sharing, the CLEC only purchases the high frequency portion of the loop, the low frequency portion being retained by the incumbent to provide POTS service. Therefore, one may distinguish splitter ownership in line splitting and line sharing, based on the fact that the CLEC does not purchase the entire loop in the latter scenario. Nevertheless, the Arbitrators find that whether a CLEC orders an entire loop or just the HFPL, SWBT is required to provide the full features, functions, and capabilities of the loop. Because the splitter is included within the full features, functions, and capabilities of the loop whether via line splitting or line sharing, SWBT must provide CLECs with splitters.

Finally, some CLECs argue that they should be able to designate the vendor of their choice for provisioning ILEC-owned splitters.<sup>82</sup> The Arbitrators do not find support in this

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<sup>81</sup> *Id.*

<sup>82</sup> Donovan Direct at 42.

record to require SWBT to order splitters from the vendors that CLECs desire. Pursuant to its obligations as an incumbent to provide splitters, SWBT has to perform capacity management and develop plans to provision splitters to any requesting CLEC in Texas. The Arbitrators do not believe that it is efficient for SWBT to plan, engineer and equip central offices with splitters from different vendors. Also, if a CLEC prefers a specific splitter type, the CLEC is free to purchase that splitter and install it in its collocation space. Therefore, although the Arbitrators require SWBT to offer splitters as part of the HFPL UNE loop, we decline to require SWBT to obtain splitters from the CLECs' desired vendors.

**3. If an ILEC owns the splitter, should it be required to provide splitter functionality in line increments and shelf increments, at the option of the CLEC?**

***CLECs' Position***

Rhythms asserts that splitter functionality should be provided in both line increments and in shelf increments. Rhythms contends that the line-at-a-time provisioning of splitters does not allow SWBT to hard-wire splitter connections through a CLEC's DSLAM.<sup>83</sup> Rhythms indicates that this results in added costs due to additional cabling, ladder racking, frame blocks, and provisioning work that have to be performed for every line.<sup>84</sup> Rhythms claims that the additional cabling involved in line-at-a-time provisioning could also multiply potential points of failure and increase the opportunities for central office technicians to make mistakes.<sup>85</sup> On the other hand, Rhythms maintains that the shelf-at-a-time provisioning results in lower costs, as it allows the ILEC to pre-wire the data ports of the splitter directly to the CLEC's collocation cage.<sup>86</sup>

Rhythms further contends that SWBT's port-at-a-time proposal would force CLECs to rely on SWBT for capacity management and that CLECs would be aware of the number of splitter ports available in any given central office.<sup>87</sup> According to Rhythms, this scenario could lead to a possibility wherein a customer orders a xDSL service from a CLEC only to find that

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<sup>83</sup> Rhythms Ex. 2, John Donovan Adopting Direct Testimony of Michael Zulevic "Donovan Adopting Zulevic Direct" at 14-18 (October 6, 2000).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

there is no splitter available.<sup>88</sup> Rhythms claims that if the CLECs had the option of using splitters in shelves, they could perform their own capacity management.<sup>89</sup>

IP and Sage agree with Rhythms, stating that both splitter options are necessary to allow the CLECs to implement individualized business plans and provide advanced services to Texas customers.<sup>90</sup> IP and Sage urge the Commission to avoid a one-size-fits-all configuration.<sup>91</sup> However, IP notes that it supports the port-at-a-time option as it is the configuration that it expects to generally use.<sup>92</sup>

WCOM concurs with the positions of IP and Rhythms.<sup>93</sup>

### ***SWBT's Position***

SWBT contends that its decision to provide splitters a line-at-a-time is voluntary and in response to CLECs' requests for line increments during the collaborative process. SWBT asserts that CLECs have no authority to expand on SWBT's voluntary splitter offering.<sup>94</sup> SWBT testified that it has already wired approximately 807 splitters shelves for line-at-a-time provisioning and it is not practical to require SWBT to provide splitters in both line and shelf increments.<sup>95</sup> SWBT's witness Schlackman testified that limitations on SWBT's inventory system, frame exhaust, and inefficient use of capital for both SWBT and CLECs are all reasons SWBT should not be required to provision splitters in shelves.<sup>96</sup>

Additionally, SWBT maintains that its OSS system for provisioning splitters, called SWITCH, is limited in its capability to accommodate both line and shelf provisioning in a flow-through manner.<sup>97</sup> Schlackman testified that if SWBT is required to upgrade its OSS to support both line and shelf functionality, it will have to undergo not only the costs associated with

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<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> IP and Sage Initial Brief at 14-15.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> WCOM Initial Brief at 7.

<sup>94</sup> Schlackman Direct at 10.

<sup>95</sup> *Id.* at 14.

<sup>96</sup> *Id.* at 12-14.

upgrading the software system, but would have to re-format its inventories, revise its collocation application, rewrite all of SWBT's methods and procedures, procure and install additional splitters, and create or revise capacity management tools.<sup>98</sup>

SWBT counters CLEC's claims that the shelf-at-a-time splitters is more efficient, by asserting that the line-at-a-time solution uses space on the MDF more efficiently than the shelf option.<sup>99</sup> SWBT stresses that the shelf-at-a-time proposal could lead to frame exhaust on the MDF.<sup>100</sup> SWBT points out that in a line-at-a-time arrangement, several CLECs share the same shelf, which results in optimal use of the splitter and reduces the number of blocks placed on the MDF.<sup>101</sup> On the other hand, SWBT argues, with the shelf-at-a-time proposal, each CLEC has its own dedicated shelf, which may not be fully utilized. SWBT indicates that the shelf solution not only increases the number of splitters required for line sharing, but also the number of cables and blocks terminating on the MDF, thus reducing the effective space on the frame.<sup>102</sup> SWBT is also concerned about CLECs utilizing its network inefficiently by reserving blocks of ports on the MDF without any guarantees that those will be used to serve customers.<sup>103</sup>

SWBT considers offering splitters a line-at-a-time more efficient from an investment standpoint as well. Because more splitters have to be deployed for the shelf-at-a-time option, SWBT is concerned about stranded splitter investments resulting from unused splitters. Further, SWBT claims that splitter technology is in its infancy and that current splitters may become obsolete with advancements in technology.<sup>104</sup> Consequently, SWBT considers current splitter solutions to be interim, and perceives them to be a potentially dangerous investment.<sup>105</sup>

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<sup>97</sup> *Id.* at 14.

<sup>98</sup> *Id.* at 15.

<sup>99</sup> *Id.* at 18.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 18-19.

<sup>102</sup> SWBT Initial Brief at 26-27.

<sup>103</sup> *Id.*

<sup>104</sup> Schlackman Direct at 19.

<sup>105</sup> *Id.*

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*Arbitrators' Decision*

The Arbitrators decline to require SWBT to provide splitters a shelf-at-a-time for the following reasons:

First, during the interim phase the Arbitrators were “not persuaded that the shelf-at-a-time approach [was] necessarily more efficient than the line-at-a-time approach.”<sup>106</sup> Once again, based on the evidence presented, the Arbitrators are not convinced that providing splitters a shelf-at-a-time is necessarily more efficient than providing them a line-at-a-time. For instance, the shelf-at-a-time proposal could lead to inefficient use of critical facilities like the MDF with several partially populated splitter shelves.<sup>107</sup> In addition, it could also increase the overall number of cables and blocks on the shelf.<sup>108</sup> Rhythms contends that the use of DLCs will minimize frame exhaust.<sup>109</sup> However, the facts on this issue remain unclear. Therefore, the Arbitrators believe it would be unwise to require SWBT to provision splitters a shelf-at-a-time based on the speculation that DLC deployment will minimize frame usage.

Second, the Arbitrators find that SWBT has met its legal obligation by providing CLECs with line-at-a-time functionality. As required by the *Line Sharing Order*, SWBT must provide unbundled access to the high frequency portion of the loop.<sup>110</sup> The Arbitrators believe that SWBT satisfies this requirement by providing splitters in line increments. While the Arbitrators acknowledge that there may be additional benefits with having both options, the Arbitrators note that this does not justify requiring SWBT to provide shelf increments as well. The CLECs have not presented any additional evidence to the Arbitrators that warrants ordering SWBT to provide shelf increments.

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<sup>106</sup> See *Interim Award* at 13.

<sup>107</sup> Schlackman Direct at 18.

<sup>108</sup> Ms. Schlackman illustrates the frame exhaust situation with an example “[if] ten CLECs have requested to implement line sharing for a total of 192 lines and that none of these CLECs provide their own splitter functionality. If each of the ten CLECs requested that SWBT provide the CLECs its own shelf, ten shelves would be required. But if the CLECs purchased the splitter functionality a line-at-a-time, only two shelves would be required. On the frame the difference is significant; eighty cables vs. twenty-four cables; twenty blocks vs. six blocks.” Schlackman Direct at 18.

<sup>109</sup> Donovan Rebuttal at 8.

<sup>110</sup> *Line Sharing Order* ¶ 13.

Third, based on indications from the CLECs during line sharing trials, SWBT has already wired all of its 232 central offices in which CLECs requested SWBT-owned splitters, to accommodate line-at-a-time functionality.<sup>111</sup> According to SWBT, approximately 807 splitter shelves have been wired for line-at-a-time provisioning.<sup>112</sup> SWBT claims that to accommodate shelf-at-a-time provisioning, it will have to undergo not only the costs associated with upgrading the software system, but it would have to re-format its inventories, revise its collocation application, rewrite all of SWBT methods and procedures, procure and install additional splitters, create or revise capacity management tools, and train its employees.<sup>113</sup> The Arbitrators believe that it would be an inefficient use of resources to require SWBT to reengineer its offices to accommodate the shelf-at-a-time functionality.

Fourth, SWBT's OSS systems currently limit SWBT's ability to provision splitters both a line-at-a-time as well as a shelf-at-a-time.<sup>114</sup> SWBT upgraded its back office system, SWITCH, to accommodate line-at-a-time provisioning in a flow-through manner.<sup>115</sup> At the time when the OSS systems for line sharing were developed, Telecordia, SWBT's OSS vendor, indicated to SWBT that it would not be able to support flow-through provisioning in a timely manner if it had to provide both splitter options.<sup>116</sup> SWBT maintains that the flow-through feature was necessary to accommodate automatic assignment of splitter ports; therefore, the OSS was developed to accommodate line-at-a-time splitters only.<sup>117</sup> Consequently, to provide splitters in shelf-at-a-time, the assignment of splitter ports would need to be done manually, a process that increases the likelihood of provisioning errors.<sup>118</sup> If SWBT were required to accommodate a shelf-at-a-time offering with flow-through capability, it would have to reengineer and redo an expensive upgrade to its OSS system.<sup>119</sup> Because SWBT has already met its legal requirement by

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<sup>111</sup> Schlackman Direct at 6.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 15.

<sup>114</sup> *Id.* at 14-15.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at 13-17.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at 19-20.

<sup>119</sup> *Id.* at 16.

providing splitters in line-at-a-time, the Arbitrators believe that there are no compelling reasons to require SWBT to make such an investment.

Finally, the Arbitrators note that splitter technology is in its infancy, and without certainty from the CLEC community, the shelf-at-a-time provisioning might leave SWBT with stranded investments.<sup>120</sup> Further, CLECs have maintained on the record that splitter densities have been increasing, implying that current splitters will become obsolete soon.<sup>121</sup> Also, in the future, all DSLAMs may include splitter functionality, thus alleviating CLECs' need of ILEC-owned splitters. Therefore, the Arbitrators find that it would be imprudent to require SWBT to commit additional investments to accommodate both splitter options.

Based on the above reasoning, the Arbitrators conclude that SWBT is not required to provide splitter functionality in line-at-a-time as well as shelf-at-a-time. Although, we agree with those CLECs that indicate it is possible for SWBT to support a shelf-at-a-time in addition to a line-at-a-time offering, we do not believe that SWBT is obligated to provide both. After considering the already deployed splitter architecture, SWBT's OSS limitations, frame efficiencies, and SWBT's legal requirements, the Arbitrators conclude it would not be sound public policy to require SWBT to offer both line and shelf functionality. Should a CLEC believe that a shelf-at-a-time offering is imperative to its business model, the Arbitrators note that CLECs are free to provision their own splitters.

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<sup>120</sup> *Id.* at 19.

<sup>121</sup> Tr. 182-184.

4. What should be the location of the ILEC-owned splitters within the ILEC central office?
7. In the event common collocation space is at capacity (for placing ILEC-owned splitters), should the ILECs be required to find space other than in the common collocation space within the same central office for placing ILEC-owned splitters? (IP, et al. Issue No. 5)

#### *CLECs' Position*

IP argues that the most efficient line sharing configuration is to have splitters located as close to the Main Distribution Frame ("MDF") or on the MDF, as engineering standards permit.<sup>122</sup> IP raises several concerns associated with placing the splitter away from the MDF. First, IP asserts that placing the splitter away from the MDF will result in unreasonable increases in loop length, and limit the ability of end users to obtain xDSL services.<sup>123</sup> Second, IP claims that the further the splitter is away from the MDF, the greater the complexity in addressing maintenance concerns. IP believes that a splitter close to the MDF, or on the MDF, will minimize cabling, permit quick access to equipment by SWBT personnel, and allow orders to be provisioned expeditiously.<sup>124</sup> IP is also concerned about CLECs paying for the additional intraoffice cabling that results from placing the splitter further away from the MDF.<sup>125</sup> Third, IP rejects SWBT's position that placing the splitter on the MDF would lead to frame exhaust by pointing out that, while splitter densities have been increasing, SWBT's concerns are based on current splitter densities.<sup>126</sup> Fourth, IP maintains that it relied on SBC's initial representation that the ILEC-owned splitter would be located in the ILEC area rather than the common collocation area.<sup>127</sup> Finally, IP argues that if the Commission allows ILECs to place splitters in the common collocation area, and the area runs out of space, then SWBT should be required to find space other than the common collocation space within the central office.<sup>128</sup>

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<sup>122</sup> IP Ex. 1, Direct Testimony of Jo Gentry "Gentry Direct" at 9-10. (September 5, 2000).

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 11; IP claims that when the density of frame-mounted splitter increase to 48 pairs per block, the total frame utilization will be equivalent to that of bay-mounted splitters.

<sup>127</sup> IP and Sage Reply Brief at 13.

<sup>128</sup> Gentry Direct at 13-14.

Sage generally supports IP's arguments on splitter location.<sup>129</sup>

AT&T argues that from a practical standpoint ILEC-owned splitters should be located as close to the MDF as possible.<sup>130</sup> AT&T explains that equipment similar to line splitters (such as DB-loss line conditioners) are considered as part of the loop plant, and therefore would be worked on by the same technicians who install the jumpers at the MDF for the voice and data paths of the splitter.<sup>131</sup>

AT&T contends that the second reason for placing the splitter near the MDF relates to cost.<sup>132</sup> AT&T explains that placing the splitter in the common area of the collocation arrangement requires interconnection cables from the MDF to the splitter, and from the splitter back to the MDF.<sup>133</sup> AT&T estimates that the CLECs can realize a 50% reduction in the cost of interconnection cabling if the splitters were placed close to the MDF.<sup>134</sup> AT&T states that as the distance between the MDF and the splitter location is increased, it lowers the data speed across the xDSL circuit.<sup>135</sup> AT&T, therefore, believes that SWBT should make every effort to minimize splitter cabling distance.<sup>136</sup> AT&T further argues that SWBT should be required to find space elsewhere in the central office if the common collocation area is exhausted.<sup>137</sup>

WCOM believes that SWBT should provide a CLEC-owned splitter in the CLEC area, a CLEC-owned splitter in the common area, and the ILEC-owned splitter in the ILEC area.<sup>138</sup> However, WCOM supports an arrangement where the ILEC-owned splitter is placed in the common collocation area, with a high density cross connect (HDCC).<sup>139</sup> According to WCOM, a centralized splitter location along with the use of a HDCC provides the most efficient and

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<sup>129</sup> IP and Sage Initial Brief at 15-17.

<sup>130</sup> AT&T Ex. 2, Rebuttal Testimony of Steve Turner "Turner Rebuttal" at 8-9 (October 20, 2000).

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> AT&T Initial Brief at 8.

<sup>138</sup> WCOM Ex. 1, Direct Testimony of William Drake "Drake Direct" at 3 (September 5, 2000).

<sup>139</sup> *Id.*

maintainable arrangement and is the best technical configuration for line-shared services.<sup>140</sup> WCOM states that SWBT's splitter placement proposal could add considerable distance to a line-shared loop, which could cause a customer to lose the ability to receive a desired maximum bandwidth.<sup>141</sup>

WCOM distinguishes the holding in *GTE v. FCC*, indicating that while it relates to whether CLECs can collocate in any technically feasible location on the ILEC's central office that scenario is different from the ILEC-provided splitters scenario.<sup>142</sup> WCOM reasons that in many instances, the location of the CLEC's equipment does not dramatically impact the quality of service.<sup>143</sup> In the case of a splitter, however, WCOM argues the location of splitters will impact the quality of service offered by the CLECs.<sup>144</sup> WCOM further adds that notwithstanding the court's decision, the Commission has jurisdiction to establish requirements for splitter ownership.<sup>145</sup> WCOM supports IP on the issue on space exhaustion in the common collocation area.<sup>146</sup>

Rhythms asserts that the splitter should be located on the distribution frame itself.<sup>147</sup> Rhythms states that efficient engineering practices call for locating all line related equipment, in particular xDSL equipment, as close to the frame as possible.<sup>148</sup> Rhythms explains that xDSL is a distance limited service, and therefore the splitter should be placed either on the frame or as close as possible to the frame (preferably placed within 25 feet from the distribution frame).<sup>149</sup> Rhythms offers Quest as an example of an ILEC that installs splitters on the distribution frame in certain large central offices.<sup>150</sup> Rhythms claims that placing the splitter in the common collocation space will reduce the amount of efficient space available for the CLECs to collocate

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<sup>140</sup> *Id.*

<sup>141</sup> WCOM Reply Brief at 6.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> WCOM Initial Brief at 8.

<sup>147</sup> Donovan Adopting Zulevic Direct at 4-5.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 7.

<sup>150</sup> *Id.* at 9.

their transmission equipment.<sup>151</sup> Rhythms contends that the second preferred option (a splitter close to the MDF) increases costs to the CLECs and is a less efficient architecture compared to the frame-mounted splitter.<sup>152</sup> According to Rhythms, every additional foot of distance between the frame and the splitter results in two additional feet of cabling and twice the cost.<sup>153</sup> Rhythms argues that the additional cost would be borne by the customer and would unnecessarily increase the price of a sensitive product like xDSL.<sup>154</sup>

Rhythms maintains that it is possible to deploy a forward-looking network where the splitter is mounted on a frame in an ILEC central office as they are currently configured.<sup>155</sup> According to Rhythms, frame mountable splitters are readily available and can easily be located on existing ILEC distribution frames or within 25 feet from the frame.<sup>156</sup> Rhythms contends that there are several cost advantages with a frame-mounted splitter due to efficient use of cable rack, relay rack, space, lighting, and cabling to and from a remotely located relay rack.<sup>157</sup> Rhythms believes that frame-mounted splitters are especially appropriate in small central offices where there is uncertain demand for line-shared xDSL, because SWBT would expend fewer resources to provision line sharing in those offices. As a result, Rhythms believes that the cost of deployment of advanced services in rural areas could be minimized with its proposal.<sup>158</sup> Rhythms concludes by stating that SWBT's decision not to place the splitter on the frame has nothing to do with sound engineering principles, but has to do with SWBT's policy decisions.<sup>159</sup>

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<sup>151</sup> *Id.* at 14.

<sup>152</sup> *Id.* at 5-6.

<sup>153</sup> *Id.* at 6-7

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 9.

<sup>156</sup> *Id.* at 10

<sup>157</sup> *Id.* at 11-12.

<sup>158</sup> *Id.*; Mr. Donovan illustrates his point with an example. "Assume that a CLEC focussing on a rural DSL market wants to provide line-shared DSL out of a small central office with fewer than 10,000 access lines. The CLEC, however, believes that immediate demand for that particular service will be approximately 32 lines. Under SWBT's proposal, the installation of a full relay rack mounted splitter to accommodate that demand would require four blocks on the distribution frame, relay rack space, ladder racking and extensive cabling that increases by a multiple of at least three for every foot of distance that the splitter is placed apart from the distribution frame. By using frame-mounted splitters to accommodate the same demand, SWBT, would only use the frame space for two blocks and the single cable and associated ladder racking necessary to carry the data signal from the splitters to the CLEC's collocation space."

<sup>159</sup> *Id.* at 10.

*SWBT's Position*

SWBT rejects CLECs' suggestions that the splitter should be placed on the MDF or near it. SWBT asserts that legally it has the discretion to choose the location of the splitter.<sup>160</sup> SWBT argues that decisions made by the Courts, the FCC and other state commissions, affirms its position.<sup>161</sup> SWBT contends that the D.C. Circuit Court of Appeals in *GTE Services v. FCC*, upheld that incumbents are best suited to determine the placement of equipment in their central office.<sup>162</sup> SWBT maintains that the FTA does not permit the CLECs to determine where to collocate their equipment in an ILEC's central office and therefore asserts that CLECs cannot dictate where the ILEC can place its own equipment within its central office.<sup>163</sup>

SWBT claims that sound central office engineering practices do not call for installing the splitter on the MDF and that equipment like splitters are not normally mounted there.<sup>164</sup> According to SWBT, the MDF is a critical facility and its primary use is for mounting and connecting terminating blocks through the use of cross connects and jumpers. SWBT claims that using the MDF for mounting splitters will consume twice the amount of splitters necessary and lead to "frame exhaust", a term SWBT uses to imply lack of space on the frame.<sup>165</sup> Instead, SWBT believes that there are benefits to placing the splitter in the common collocation area. According to SWBT, placing the splitters in the common area versus the MDF allows the CLECs

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<sup>160</sup> SWBT Initial Brief at 30-31.

<sup>161</sup> SWBT notes that in *GTE Service Corp. v. FCC*, 205 F.3d 416, 426 (D.C. Cir 2000), "*GTE v. FCC*" the court held that "the FCC offers no good reason to explain why a competitor as opposed to the LEC should choose where to establish collocation on the LEC's property.... It is one thing to say that LECs are forbidden from imposing unreasonable minimum space requirements on competitors; it is quite another thing, however, to say that competitors, over the objection of LEC property owners, are free to pick and choose preferred space on the LECs' premises subject to only technical feasibility. There is nothing in § 251 (c)(6) that endorses this approach." SWBT also states that "The Illinois Commission rejected the CLEC argument that splitters be located on the MDF and confirmed that CLECs "cannot dictate where splitters are located in an [ILEC's] central office." The California Commission also reached this conclusion with regard to splitter placement, finding that "[n]othing in the FCC Line Sharing Order suggests or directs that the [CLEC] may dictate the location of an ILEC-owned splitter." Finally, in the *Line Sharing Order*, the FCC acknowledged that the splitter would not be placed on the MDF in stating that: "[t]he splitter will likely be installed between the MDF and the other central office equipment." SWBT Post-Hearing Reply Brief "SWBT Reply Brief" at 18 (March 1, 2001).

<sup>162</sup> *Id.* at 30-31.

<sup>163</sup> *Id.*

<sup>164</sup> Schlackman Direct at 22; SWBT Initial Brief at 31-32. "The MDF is designed for wiring -i.e., for mounting, connection and terminating blocks to facilitate cross connections and jumper wire placements."

<sup>165</sup> SWBT Initial Brief at 32.

7 days a week, 24 hours a day test access while utilizing a very small percentage of the available "common" space.<sup>166</sup>

SWBT rejects CLECs' claims that frame-mounted splitters are more efficient than bay-mounted splitters stating that the CLECs are viewing efficiency from a very narrow perspective.<sup>167</sup> SWBT maintains that TELRIC design principles do not require SWBT to optimize its central office for one technology; rather sound planning and engineering take into account different technologies and needs of the customers served out of a central office.<sup>168</sup>

SWBT dismisses CLECs' assertions that placing the splitter away from the MDF would limit a customer's ability to obtain xDSL services. SWBT acknowledges that placing the splitter away from the frame causes a "Z" effect due to cables running back and forth from the frame to the splitter, but claims that such problems arise in limited circumstances, and can be dealt with accordingly.<sup>169</sup> SWBT believes that based on loop length information, the CLECs can determine whether to provide their own splitter, thereby minimizing interoffice cabling, or choose to use a bay-mounted ILEC-splitter located in the common collocation area.<sup>170</sup> On the issue of space exhaustion, SWBT states that if no space exists in the common area, SWBT will place splitter shelves within its own equipment space and manage the splitter equipment under the terms and conditions of virtual collocation.<sup>171</sup>

### ***Arbitrators' Decision***

The Arbitrators find no legal basis to require SWBT to place the splitter on or near the MDF. Regardless of the "efficiency" and "technical feasibility" arguments that CLECs put forth, the D.C. Circuit court of appeals in *GTE Services v. FCC* held that:

The FCC offers no good reasons to explain why a competitor as opposed to the LEC, should choose where to establish collocation on the LEC's property. ... It is

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<sup>166</sup> Schlackman Direct at 20-23; Schlackman Rebuttal at 5-15;

<sup>167</sup> SWBT Initial Brief at 32.

<sup>168</sup> *Id.*

<sup>169</sup> Schlackman Direct at 20-21.

<sup>170</sup> *Id.*

<sup>171</sup> SWBT Ex. 1, Direct Testimony of Randall Butler "Butler Direct" at 5 (September 5, 2000).

one thing to say that LECs are forbidden from imposing unreasonable minimum space requirements on competitors; it is quite another thing, however, to say that competitors, over the objection of LEC property owners are free to pick and choose preferred space on the LEC's premises subject to only technical feasibility. There is nothing in §251 (c)(6) that endorses this approach.<sup>172</sup>

Additionally, in the *Line Sharing Order*, the FCC recognized that the "[t]he splitter will likely be installed between the MDF and the other central office equipment."<sup>173</sup> CLECs cite efficiency as the main argument for placing the splitters close to the MDF. This view of efficiency advocated by the CLECs is limited in scope and targeted only toward optimizing xDSL services. SWBT, as an ILEC, has additional obligations beyond providing splitter functionality to the CLECs. SWBT has to manage its central office floor space, take frame exhaust possibilities into consideration, optimize the network for competing technologies, address user considerations and ensure that its facilities are used in an efficient and safe manner. Equipment placement policies, therefore, cannot be evaluated in a vacuum. Each central office is unique in its equipment placement, architecture and space constraints. To develop an equipment placement policy for a single piece of equipment, such as a splitter, without considering the constraints of other related equipment, is not sound public policy. The Arbitrators agree with SWBT that it is in the best position to determine from a overall network perspective how to best place and manage equipment in a central office.

The Arbitrators agree with CLECs that it is technically feasible to place the splitter on the MDF. However, the Arbitrators do not believe that the MDF is the appropriate location for mounting splitters. First, the MDF is primarily used for connecting and terminating blocks. To use a critical and expensive component such as the MDF for mounting splitters appears to be an inefficient use of a scarce resource. Second, frame-mounted splitters have less density compared to bay-mounted splitters. Therefore, the frame-mounted splitter occupies more area on the MDF to provide the same number of splitter ports as would be provided by a bay-mounted splitter. Moreover, 50% of SWBT's central offices where CLECs have sought SWBT-owned splitters

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<sup>172</sup> *GTE, v. FCC*

<sup>173</sup> *Line Sharing Order* at ¶ 113.

have a COSMIC frame, instead of an MDF.<sup>174</sup> There is no evidence in the record to suggest that frame-mounted splitters are readily available for the COSMIC frame, as the COSMIC frame is a fading architecture.<sup>175</sup> It should also be noted that CLECs such as Sprint concur with SWBT that the MDF may not be the best place to mount splitters.<sup>176</sup>

CLECs have argued that splitter densities are expected to increase, and therefore the MDF should eventually pack more splitter terminations in a given area. Record evidence shows that splitter technology is in its infancy and current splitter densities, and consequently splitters, are likely to be outdated soon. Requiring SWBT to mount splitters today on the MDF may lead to stranded splitter investments in the future. Testimony also revealed that, as technology evolves, the splitter is likely to become a standard part of the CLECs' DSLAMs. At that point in time the issue of issue of splitter location becomes irrelevant.

The Arbitrators are swayed by the evidence showing that frame-mounted splitters are more expensive, consume additional space on the frame, and require more space than a bay-mounted splitter.<sup>177</sup> The Arbitrators also find that there are additional maintenance issues associated with a frame-mounted splitter.<sup>178</sup> If a splitter fails, for instance, SWBT identifies a series of complex steps to replace frame-mounted splitters, compared to few in a bay-mounted splitter.<sup>179</sup>

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<sup>174</sup> Tr. 192.

<sup>175</sup> Tr. 193-195.

<sup>176</sup> Tr. at 198. (And Sprint's position on this issue is that placing splitters on the MDF is not a wise engineering move. ... Once that space is exhausted, you're looking at a major renovation to provide more mainframe space.)

<sup>177</sup> Ms. Schlackman stated that "While the representative [from Corning] did not know the exact price [for a 16 line splitter, he responded to me that the price was 30% to 50% higher, per line or port, than the price per port or line of bay-mounted splitters...." "In fact, it requires six of Corning's frame-mounted splitters to equal the identical capacity represented by three blocks cabled to a bay-mounted splitter or stated another way, requires 48 inches of frame space as opposed to less than 23 1/4 inches of frame space with the bay-mounted splitter." Schlackman Rebuttal at 10-11.

<sup>178</sup> Schlackman Rebuttal at 11-12.

<sup>179</sup> SWBT offers the comparison between the two scenarios as follows: "Bay-mounted Splitter Card Failure: (1) The technician removes the failed card and replaces with a new card; Frame-mounted Splitter Card Failure: (1) The technician must first determine the telephone number of both lines on the failed card, (2) The technician must then contact the assignment office and request new splitter port assignments for both end users. The assignment office then provides the authorization and inputs the changes to SWBT's systems, (3) The technician must rewire both circuits to a new splitter assignment, (4) When the cross connection wiring has been removed and rewired to another splitter, the internal cables within the unit must be cut from the plastic wrap and removed from the card so that the

The record evidence does not support the assertion that placing the splitter away from the MDF results in increased failure and maintenance complexity, except in a small number of instances.<sup>180</sup> Whether the splitter is placed near the MDF or in a common collocation space as proposed by SWBT, the evidence shows that the same number of cross connects and cables are necessary. Provisioning cables from the frame to the collocation area is not unique to line sharing. SWBT provides the necessary wiring and cables, to and from the frame to CLECs' collocation cages, for other services as well. The Arbitrators required the parties to monitor this concern during the interim phase. The Arbitrators, however, were not presented with any new evidence to alter our decision.

Collocation space in many central offices may be limited and it is possible that with increased CLEC deployment, SWBT may run out of space for installing ILEC-owned splitters. The Arbitrators find that SWBT cannot reject CLEC orders for ILEC-owned splitters if the common area runs out of space, as SWBT has an obligation to provide splitters to requesting CLECs. SWBT has indicated that if the common collocation area runs out of space, it will install splitters within its equipment line-up.<sup>181</sup> The Arbitrators are not opposed to SWBT placing ILEC-owned splitters along with SWBT's equipment if the space in the common area is exhausted. However, SWBT shall install the ILEC-owned splitters for CLECs in a similar and non-discriminatory fashion with ASI. If there is no space in SWBT's equipment line up to install ILEC-owned splitters, SWBT is required to place the splitters in other easily accessible areas of the central office. The Arbitrators are concerned about limiting CLECs' access for

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card can be removed from the slot, (5) When the new card is replaced, the internal cables need to be seated into the card, (6) The cables on the card must be cut to remove the card. Now the technician must work in a very tight and restricted space to tie wrap down the cable and redress it so the card can be reseated, (7) Assuming the change is a permanent change to new splitter ports, the technician then tests the lines and closes out the repair ticket, (8) If the wiring to an unused splitter port was a temporary measure, the technician must rewire the two circuits back to the existing assignments, test the lines and close out the repair ticket." Schlackman Rebuttal at 11-12.

<sup>180</sup> The Arbitrators acknowledge that xDSL is a distance sensitive service and the additional cable length associated with placing the splitter away from the MDF may limit the CLECs' ability to serve some of their far reaching customers. However, the Arbitrators note that this situation could be addressed by CLECs providing their own splitters. As SWBT points out, placing the splitter within the CLEC collocation cage, along side the DSLAM within a few feet, results in optimal placement of splitter. Therefore, in those limited instances, where interoffice "zigzagging" limits a customer's ability to obtain xDSL service, a CLEC can provide its own splitter functionality. The CLECs can determine whether or not to make the decision to provide its own splitter based on loop qualification analysis.

testing, maintenance and repair when the splitter is located in areas other than the common collocation area. These concerns are addressed in the Arbitrators' response to DPL Nos. 46 and 47.

8. **What is the appropriate procedure for the ILECs to notify CLECs that there is no space in the common area in a central office for placing ILEC-owned splitters? What is the appropriate procedure for disputing the ILEC's notification? (IP, et al. Issue No. 6)**

***CLECs' Position***

IP argues that SWBT should provide a 15-day notice regarding placement of SWBT-owned splitters in an area other than the common area.<sup>182</sup> Further, IP believes that SWBT should send an accessible letter to all CLEC contacts and post it on SBC's website. In addition, using the same criteria used during the SBC line sharing trial, IP asserts that all CLECs that have a DSLAM collocated in a particular central office and/or CLECs with a collocation application pending to collocate a DSLAM should receive additional notification.<sup>183</sup> IP believes that such notifications are necessary because CLEC employees have to be trained to maintain splitters in locations other than the common area and have to determine on a customer-by-customer basis whether the customer should be served by a common area splitter or an ILEC-area splitter.<sup>184</sup>

Rhythms does not take any position on this issue.<sup>185</sup>

WCOM agrees with IP's position.<sup>186</sup>

***SWBT's Position***

SWBT asserts that there is no obligation under the Texas Collocation Tariff to provide such a notification.<sup>187</sup> According to SWBT, it would be impractical to notify CLECs when the space in a "common" area is exhausted. SWBT explains that exhaustion of space in a common

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<sup>181</sup> Butler Direct at 6.

<sup>182</sup> Gentry Direct at 14-15.

<sup>183</sup> *Id.* at 16.

<sup>184</sup> *Id.*

<sup>185</sup> Rhythms Initial Brief at 31.

<sup>186</sup> WCOM Initial Brief at 9.

collocation area does not indicate that a central office is exhausted of all available physical collocation space as the existing collocation area may still have room for physical collocation arrangements, expansion into contiguous space, or availability in another part of the building.<sup>188</sup>

SWBT further argues that even if there were no space in the common collocation area to place splitters, it should be able to meet CLEC's demand for splitters by placing them in SWBT's equipment space.<sup>189</sup>

### ***Arbitrators' Decision***

The Arbitrators disagree with SWBT that it is not required to notify CLECs when the space in the "common" area is exhausted for placing splitters. The Texas Collocation Tariff requires SWBT to notify CLECs when space is exhausted in the physical collocation area. The Commission developed these requirements to ensure that CLECs that interconnect with SWBT's network have advance notice regarding space exhaustion and are prepared accordingly. While the Collocation Tariff does not specifically address the issue of notification when the common collocation area runs out of space, the Arbitrators believe that the Commission's intent should be preserved in this context as well. When space exhausts in the common area, the Arbitrators have indicated it is reasonable for SWBT to place the splitters along with its equipment line up or at other reasonably accessible places within the central office. However, placing the splitter in a location other than the common area, impacts test and maintenance access for the CLECs. For instance, if the splitter is placed alongside SWBT's equipment line-up, CLECs may have to obtain a security clearance to allow its employees access to the ILEC area, develop additional procedures for troubleshooting splitter problems and train employees accordingly. Therefore, the Arbitrators find that if space exhausts in the common area, SWBT is required to send an accessible letter to all parties that have a DSLAM collocated in its central office and post the notice on the SBC website.

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<sup>187</sup> Butler Direct at 5-6.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

9. **Should SWBT be required to provide tie cable augments, reconfiguration of existing tie cable pairs, and installation of ILEC-owned splitters for line sharing within 30 calendar days of receiving a CLEC order?**

*CLECs' Positions*

IP recommends a 15-day interval for providing tie cable augments and reconfiguration of existing tie cable pairs.<sup>190</sup> IP states that when a CLEC receives a "no facilities" flag due to the lack of splitters, the CLEC needs a known interval and reasonable time frame for installing additional splitters. Because a splitter is a passive device that is easy to install and does not require heat dissipation, IP believes that a fifteen-day interval is reasonable.<sup>191</sup> IP also recommends the same 15-day period as the augment interval for additional tie cable to a collocation arrangement, which requires similar central office cabling work.<sup>192</sup>

Rhythms recommends that the tie cabling for line sharing be completed within thirty days or less. Rhythms explains that CLECs that provide their own splitters must have tie cabling, which connects the MDF to a CLEC's splitter equipment.<sup>193</sup> For a splitter to be operational, all tie cabling must be completed.<sup>194</sup> Rhythms believes that the interval it proposes is technically feasible because installation of tie cables is a simple task that is routinely performed by the ILECs.<sup>195</sup> Rhythms also contends that SWBT has known since the issuance of the *Line Sharing Order* that it was required to have facilities and procedures in place by June 6, 2000 to support line sharing. Therefore, Rhythms believes that SWBT should have been planning to install tie cables necessary for line sharing on an expedited basis and in bulk.<sup>196</sup> Rhythms reasons that given the relative simplicity of tie cable arrangements, the Commission should order SWBT to provide tie cables within the thirty day interval.<sup>197</sup>

WCOM agrees with IP's and Rhythms' positions.

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<sup>190</sup> Gentry Direct at 23.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> Donovan Direct at 56.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

**SWBT's Position**

SWBT states that the appropriate provisioning intervals for collocation are already in place in its Collocation Tariff, and there are no legitimate grounds for instituting new intervals specific to line sharing.<sup>198</sup> SWBT claims that the Collocation Tariff provides Texas CLECs with the most aggressive collocation intervals in the United States and, therefore, urges the Commission to adopt a decision consistent with the Tariff. While the Collocation Tariff does not address time intervals for reconfiguring tie cables, SWBT voluntarily agrees to perform reconfiguration using the same intervals as those outlined for augments in the Tariff. Those intervals are as follows:<sup>199</sup>

<b>Tie Cable augments for voice grade DS0 pairs<sup>200</sup></b>	
15 calendar days	100 Copper (shielded or nonshielded) cable pairs (blocks and cabling only; panels, relay racks and overhead racking exist)
30 calendar days	200 Copper (shielded or nonshielded) cable pairs (2 blocks) up to 400 feet
60 calendar days	400 Copper (shielded or nonshielded) cable pairs (2 blocks) up to 400 feet

**Arbitrators' Decision**

The Arbitrators held during the interim phase that tie cables should be provisioned pursuant to the intervals provided in the SWBT Collocation Tariffs.<sup>201</sup> The Arbitrators decision was based on the fact that tie cable provisioning "is not unique to the HFPL UNE."<sup>202</sup> Once again, the Arbitrators are not persuaded that the Commission should require SWBT to provide tie cables using a time interval different from those outlined in the Collocation Tariff. SWBT, as an incumbent, may be required to provision several orders simultaneously. The Arbitrators find that

<sup>197</sup> *Id.*

<sup>198</sup> Butler Direct at 7-8.

<sup>199</sup> *Id.* at 8-9.

<sup>200</sup> The above calendar day intervals will apply only when the collocator provides a complete application. The job must be an augment to an existing collocator cage or area and limited up to and not more than the above quantities.

<sup>201</sup> *Interim Award* at 24.

<sup>202</sup> *Id.*

there is no basis, legal, policy or otherwise, to require SWBT to use shortened provisioning intervals when the tie cables are used for xDSL services. Therefore, the Arbitrators determine that the provisioning intervals outlined in the Collocation Tariff should be used for providing tie cable augmentation as well. Additionally, the Arbitrators find that SWBT shall provide tie cable reconfiguration in the same time frame as it provides augmentation, as it involves similar work functions.

**10. What are the appropriate increments and processes for carrier facility assignment ("CFA") reservation/dedication?**

***CLECs' Positions***

IP and Sage argue that CLECs have long sought to have the same CFA available in both the TIRKS database and the SWITCH database.<sup>203</sup> IP and Sage believe that this OSS feature is necessary to allow CLECs to manage their cable responsibly and avoid multiple assignments of the same cable pair. IP and Sage indicate that SBC agreed to research the application of a Universal CFA as an interim "solution," i.e., a CFA that could be used for either for UNE loops or for line-shared loops. However, IP and Sage note that no progress has been made on that issue and SBC has yet to commit to a date for the implementation of a permanent Universal CFA solution.

IP and Sage recommend that the Arbitrators order SWBT, as an interim measure, to allow all new and existing tie-cable CFA to be universally available for both line sharing and UNE loops.<sup>204</sup> Without such an interim measure, IP and Sage believe they cannot efficiently utilize central office tie cabling. Further, IP recommends that the Arbitrators order SWBT to develop a permanent solution no later than June 2001 and require SWBT to implement the process through a collaborative forum.

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<sup>203</sup> IP and Sage Initial Brief at 24.

<sup>204</sup> *Id.* at 25.

WCOM takes no position on this issue.<sup>205</sup>

Rhythms takes no position on this issue.<sup>206</sup>

### ***SWBT's Position***

SWBT proposes that new OE (Office Equipment terminations used to connect to SWBT's voice service) and CP (Cable Pair terminations used to connect to the UNE loop) cables be placed in complements of 100 pairs, terminated on different blocks.<sup>207</sup> SWBT believes that this increment is reasonable for three reasons: First, cabling from splitters to the frame is terminated on 100 pair connector blocks, which is supported by the vast majority of POTS splitter manufacturers.<sup>208</sup> Second, the provisioning system used by SWBT links the assignments between the OE and CP blocks for optimal mechanized assignments. If the above counts are disassociated, SWBT claims that the pair loading process would become manual.<sup>209</sup> Third, it will allow for proper stenciling, which will facilitate a SWBT technician's ability to identify the proper terminal block assignments.<sup>210</sup> SWBT's contends that its proposed CFA increments and reservation processes are reasonable and should be adopted by the Commission.

### ***Arbitrators Decision***

The evidence demonstrates that the CFA can be used for UNE loops or for line-shared services. The dispute over the CFA provisioning arises due to SWBT's internal OSS database incompatibilities. SWBT has designed the line sharing order process to follow a "POTS-flow" process that uses the SWITCH/FOMS database for facilities assignment.<sup>211</sup> Stand-alone UNE loops, on the other hand, follow a "design-flow" process that uses the TIRKS database for facilities assignment.<sup>212</sup> Unfortunately, while information from both databases is needed to

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<sup>205</sup> WCOM Initial Brief at 9.

<sup>206</sup> Rhythms Initial Brief at 32.

<sup>207</sup> Butler Direct at 7.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.* (Stenciling is the process by which a SWBT central office frame technician identifies cable pairs by installing appropriate name tags.)

<sup>211</sup> IP and Sage Initial Brief at 24-25.

<sup>212</sup> *Id.*

provision the line sharing loop, the databases do not interact with each other.<sup>213</sup> Consequently, the SWITCH/FOMS database does not know that the TIRKS database has already assigned a UNE loop at a particular CFA assignment.<sup>214</sup>

For efficient provisioning of line-shared services, it is important the CFA assignment be transparent with respect to its intended use. SWBT's approach to develop a facility called "Universal CFA," which would allow a CFA to be either assigned for line sharing *or* for UNE loop is a step in the right direction.<sup>215</sup> However, other than indicating that it is exploring the solution with Telcordia, SWBT has not committed to a specific time frame to solve this dual CFA issue.

The Arbitrators find that an interim solution is necessary to address this provisioning issue while SWBT develops a long-term solution. The Arbitrators further find that for the interim, SWBT shall permit dual use of its CFA *i.e.*, allow CFA to be universally available for UNE loops and line sharing. To ensure that the interim process works and is commercially viable for CLECs, SWBT shall work collaboratively with the CLECs to address this issue. SWBT shall also file a proposed time frame for developing a permanent solution to the database incompatibility issue. The Arbitrators find that, by addressing the dual CFA issue in a collaborative fashion with CLECs, all parties will better be able to use the network efficiently. The Arbitrators find that SWBT's proposal to increment UNE loops in complements of 100 pairs due to technical, provisioning, and workflow constraints to be reasonable. Further, CLECs have not provided competing positions to SWBT's CFA increment proposal. Therefore, the Arbitrators adopt SWBT's proposal on CFA cable increments.

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<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> Tr. at 167-168. In fact, SWBT agrees that it will be beneficial for its provisioning process to solve the dual CFA problem.

## V. TESTING PROCEDURES

### DPL ISSUES 37 - 40

37. What testing should SWBT be required to successfully complete prior to cooperative testing with CLEC?
38. What are the appropriate testing procedures to be included in the HFPL Appendix?
39. How is an ANI test initiated and completed for line sharing? (IP, et al. Issue No. 12)
40. Should SWBT be required to complete and pass a cooperative acceptance test with the CLEC before considering the installation of Line Sharing UNE complete?

#### *CLECs' Position*

IP and Sage argue that SWBT must perform testing sufficient to determine that it has completed its provisioning work correctly.<sup>216</sup> According to IP, this would require SWBT to perform continuity tests and ensure that all cables and cross connects are in place and properly tied down.<sup>217</sup> IP believes that the line sharing Turn-up test (Attachment JG-1) which was jointly developed between the ILECs and the CLECs addresses many of the installation testing issues.<sup>218</sup> IP and Sage support including the line sharing Turn-up test procedure as part of the HFPL appendix, with additional language to allow changes to the document through a mutually agreed procedure between SWBT and the CLECs.<sup>219</sup> IP and Sage are concerned that if the Turn-up procedure is not mandated, SWBT might unilaterally change the test procedure and CLECs will continue to have significant difficulty with the testing process.<sup>220</sup> IP and Sage support Rhythms' position on cooperative acceptance testing.<sup>221</sup>

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<sup>216</sup> IP and Sage Initial Brief at 63.

<sup>217</sup> *Id.*

<sup>218</sup> Gentry Direct at 24-25.

<sup>219</sup> IP and Sage Initial Brief at 64-65.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.* at 63.

IP supports acceptance testing as a fall back for CLECs to the extent the loop does not function as indicated by the design make-up information.<sup>222</sup> However, IP acknowledges that a CLEC cannot unreasonably withhold its acceptance for reasons other than SWBT provisioning errors.<sup>223</sup> For instance, if a CLEC is crossing a distance threshold for xDSL loops, IP believes that in those circumstances acceptance should not be withheld.<sup>224</sup> IP maintains that line-shared orders should not be closed until all provisioning steps are properly completed.<sup>225</sup> IP rejects SWBT's proposal to issue a service order completion and subsequently issue a trouble ticket for maintenance to fix a provisioning problem.<sup>226</sup> IP reasons that if a working circuit is never established in the first place, then the line sharing order was never provisioned, and therefore should be fixed as part of provisioning, not maintenance.<sup>227</sup>

Rhythms claims that a large percentage of loops do not test to specifications on due date, causing Rhythms to miss commitments to its end-users.<sup>228</sup> Rhythms states that loop acceptance testing performed on due-date-minus-one provides an opportunity for the CLEC to test and verify that the loop is actually working on the due date.<sup>229</sup> Rhythms recommends a "plant test date" as part of the provisioning process, a concept used by SWBT for its POTS, resale and design service circuits.<sup>230</sup> Rhythms asserts that loop acceptance testing will give the CLECs an equal footing to compete with SWBT's XDSL services as the CLECs can reject a loop if needed.<sup>231</sup>

WCOM supports the positions of IP and Rhythms on the above DPL issues.<sup>232</sup>

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<sup>222</sup> Gentry Rebuttal at 21.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> Gentry Direct at 24-27

<sup>226</sup> *Id.* at 24-25.

<sup>227</sup> *Id.*

<sup>228</sup> Donovan Direct at 52.

<sup>229</sup> *Id.* (Due-date-minus-one describes the period after 5:00 p.m. on the day before an order is due to be completed and before 5:00 p.m. on the actual due date. During this time period, the CLEC may test the order to determine if there are provisioning errors. Thus, proactively ensuring that the order is processed in a timely manner.)

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*; See Donovan Direct at 53 (for a detailed discussion of Acceptance Testing that Rhythms proposes.)

<sup>232</sup> WCOM Initial Brief at 26.

*SWBT's Position*

SWBT states that it does not provide cooperative testing with CLECs during the xDSL installation process. Instead, SWBT states it will use a procedure developed along with the CLECs called the line sharing Turn-up test to determine if a loop is qualified for xDSL.<sup>233</sup> Under this procedure, SWBT states that it will complete a series of steps to ensure that the service order is provisioned properly and is free of load coils.<sup>234</sup> SWBT states that after 5:00 p.m. on due-date-minus-one, CLECs can independently test the loop.<sup>235</sup> If a trouble is identified SWBT will have advance notice in order to attempt to clear the problem. However, if an order does not test properly, SWBT maintains that the order should still be closed and referred to SWBT's Local Service Center for immediate handling.<sup>236</sup> SWBT explains that completion notices, which are issued when an order is closed, are necessary to realize the benefits of mechanization and to provide quick and thorough trouble isolation.<sup>237</sup>

SWBT acknowledges that the line sharing Turn-up test may have to be revisited and modified to continue to be effective as a testing procedure.<sup>238</sup> SWBT indicates that it will jointly examine and assess testing procedures with the entire CLEC community to make appropriate changes to the Turn-up test.<sup>239</sup>

*Arbitrators' Decision*

The Arbitrators believe that the line sharing Turn-up test is an appropriate starting point toward developing a more comprehensive testing procedure. This document was developed through the combined efforts of SWBT and the CLEC community. The Arbitrators believe that the steps outlined in the document, when properly followed, ensure that xDSL line-shared

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<sup>233</sup> Schlackman Rebuttal at 21-22.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> Schlackman Direct at 37.

<sup>237</sup> *Id.*

<sup>238</sup> Schlackman Rebuttal at 22.

<sup>239</sup> *Id.* at 22-23.

circuits are installed properly.<sup>240</sup> Therefore, the Arbitrators conclude the SWBT shall complete the steps outlined in the line sharing Turn-up test when provisioning line-shared loops.

The Arbitrators agree with CLECs that the procedures for the line sharing Turn-up test should be mandated and included as part of the HFPL appendix. The Turn-up test was developed by both SWBT and the CLEC community, and SWBT agrees that the test is an important one to ensure that line-shared loops are provisioned properly. However, SWBT has not given any convincing reasons as to why the Turn-up test should not be included as part of the HFPL appendix. The Arbitrators are convinced that any administrative concerns SWBT might have in including the Turn-up test as part of the HFPL appendix are outweighed by the fact that it would impart certainty and predictability in provisioning XDSL line-shared loops. Further, including the Turn-up test as part of the HFPL appendix will prevent any potential backsliding by both the SWBT and the CLECs from their commitments outlined in that document.

The Arbitrators, however, have concerns with SWBT's current practice of closing the line-shared order, and issuing a service order completion (SOC) notice prior to the CLEC accepting the loop.<sup>241</sup> The Arbitrators find SWBT's policy of issuing a SOC irrespective of whether the line-shared loop works to be problematic. If a SWBT provisioning error prevents the loop from being xDSL ready, the Arbitrators find that the loop was never provisioned properly in the first place; therefore, closing the order runs contrary to what is commonly understood by the term "order complete." Therefore, SWBT shall keep the order open, fix the problem, and capture it in its performance measure as a provisioning delay or "miss." SWBT's current practice is problematic because the CLEC misses its due-date commitment to its customer. Because the service was never provisioned correctly, it should be captured as a provisioning "miss" in the performance measure data. Therefore, the Arbitrators require SWBT to keep the line-shared orders open, until provisioning problems are resolved .

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<sup>240</sup> Schlackman Rebuttal at 22.

<sup>241</sup> When installing a line-shared circuit, if SWBT's testing procedures indicate a "no-trouble-found," SWBT issues a SOC irrespective of whether the loop itself is xDSL ready. If the loop does not work, the CLEC is instructed to initiate a trouble report and contact SWBT's LOC to resolve the problem. Thus, the provisioning process is complete regardless of whether the line-shared loop actually works. Provisioning problems are addressed as a maintenance issue by using a trouble ticket. *See Schlackman Direct* at 37.

Some CLECs argue that cooperative acceptance testing should be included as part of provisioning line-shared loop.<sup>242</sup> While the Arbitrators acknowledge the merits of cooperative testing, we are not convinced that every line-shared loop needs to be cooperatively tested. The line sharing Turn-up test that the Arbitrators require SWBT to perform before provisioning a loop, among other things, tests for the presence of load coils, performs an ANI test, and ensures that jumpers and CFA cables are provisioned properly. Accordingly, the Arbitrators find that the line sharing Turn-up test, with the provision to update it as necessary, obviates the need to perform cooperative testing for every line-shared loop.

Although, the Arbitrators have not required SWBT to perform cooperative testing as a standard part of the Turn-up test, we do believe that there may be some circumstances that warrant testing the loop in a cooperative fashion. For CLECs that would like to perform cooperative testing, SWBT shall provide it as an option, not as part of the line sharing Turn-up test. During Phase III of this proceeding, SWBT shall develop rates for cooperative testing of xDSL circuits in a manner consistent with the rates developed for cooperative testing for other services such as coordinated hot cuts.

**41. Does virtual collocation provide CLECs with parity to the ILECs' DSL affiliates for line sharing? (IP, et al. Issue No. 15)**

***CLECs' Position***

IP and Sage argue that virtual collocation does not provide CLECs with parity to ASI, SWBT's DSL affiliate for line sharing. IP and Sage dismiss suggestions that it has the same opportunity to virtually collocate as does ASI, because IP and Sage do not believe that ASI is totally treated as a separate affiliate.<sup>243</sup> IP and Sage allege that while SWBT is required to determine splitter location on a non-discriminatory basis, SWBT's affiliate ASI benefits from proximity to the MDF, shorter cable lengths, and better maintenance and provisioning.<sup>244</sup> IP and

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<sup>242</sup> Donovan Direct at 52-53.

<sup>243</sup> IP and Sage Initial Brief at 65.

<sup>244</sup> *Id.*

Sage believe that the only way SWBT can achieve parity pursuant to the *Order on Reconsideration on Line Sharing* is to locate the ILEC-owned splitters close to the MDF.<sup>245</sup> IP and Sage do not believe that virtual collocation is a true option for the CLECs, explaining that security restrictions and other limitations of virtual collocation do not lend themselves to the evolving xDSL marketplace and hinders the ability of CLECs to compete in the market place.<sup>246</sup>

AT&T claims that SWBT discriminates against CLECs in favor of its affiliate.<sup>247</sup> AT&T alleges that while the Virtual Collocation Tariff gives SWBT the option to allow a CLEC to have access to virtual collocation, if other forms of physical collocation do not exist, SWBT uniformly permits ASI to use virtual collocate across its territory.<sup>248</sup> AT&T asserts that this carte blanche availability of virtual collocation does not exist for competing CLECs.<sup>249</sup>

WorldCom supports the positions of AT&T and IP.<sup>250</sup>

### ***SWBT's Position***

SWBT asserts that under the Texas Collocation Tariff all CLECs have equal and non-discriminatory access to virtual collocation, including the arrangement presently used by SWBT's advanced services affiliate, ASI.<sup>251</sup>

### ***Arbitrators' Decision***

The Arbitrators agree with SWBT that under the Texas Collocation Tariff all CLECs are required to have equal and non-discriminatory access to virtual collocation.<sup>252</sup> Whether a CLEC chooses to virtually collocate or not under the terms and conditions of the Texas Collocation Tariff is a business decision made by the CLEC. The Arbitrators realize that by using virtual collocation the CLECs might be limited by the types of xDSL services they can offer and may

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<sup>245</sup> IP and Sage Initial Brief at 16-17, citing *Line Sharing Reconsideration Order* at 21.

<sup>246</sup> IP and Sage at 65; Gentry Direct at 12.

<sup>247</sup> AT&T Ex. 1, Direct Testimony of Steve Turner "Turner Direct" at 6-7 (November 5, 2000).

<sup>248</sup> *Id.* at 31

<sup>249</sup> *Id.*

<sup>250</sup> WCOM Initial Brief at 26.

<sup>251</sup> Butler Direct at 6.

<sup>252</sup> *Id.*

lose some flexibility. However, the Arbitrators note that ASI operates under the same constraints.

AT&T alleges that CLECs do not have the ability to virtually collocate like SWBT's affiliate ASI. However, AT&T has not produced any evidence in this proceeding to establish that SWBT is discriminating against CLECs in favor of ASI. To the extent CLECs are able to bring forth evidence establishing they are not receiving parity with regard to virtual collocation, they should raise the issue in the appropriate forum. Presently, ASI is virtually collocated in SWBT's central office, and its equipment is placed along with SWBT's equipment line-up. To the extent a CLEC virtually collocates, SWBT shall provision line sharing to CLECs using the same number of cross connections and the same length of cables, as provided to ASI. However, as the Arbitrators noted in the *Interim Award*, "CLECs cannot pick and choose the benefits of virtual collocation, such as possible proximity to the MDF without taking the entire virtual collocation package."<sup>253</sup>

## VI. TEST ACCESS ISSUES

### DPL ISSUES 46 AND 47

- 46. What remote testing capabilities should SWBT be required to offer CLECs?
- 47. What physical test access should SWBT be required to allow CLECs?

#### *CLECs' Position*

Rhythms argues that CLECs must have direct physical and remote test access twenty-four hours a day, seven days a week to the MDF to test the cross-connects.<sup>254</sup> Rhythms claims that

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<sup>253</sup> *Interim Award* at 15.

<sup>254</sup> Donovan Adopting Zulevic Direct at 19-21

the splitter blocks the CLECs' ability to perform basic electrical tests.<sup>255</sup> Rhythms rejects SWBT's suggestion to test the pin jacks located on the splitter card stating that those cards are more expensive, will not permit continuity tests, and offer only minimal benefit to the CLECs.<sup>256</sup> With test access at the point where the cross-connects are made to the jumper, Rhythms claims CLECs would be able to ensure that they are working with the correct customer's line using the ANI feature.<sup>257</sup> Rhythms asserts that without the level of test access it seeks, CLECs cannot ensure that the proper customer is connected to the DSLAM.<sup>258</sup>

AT&T is concerned regarding SWBT's interpretation of the terms and conditions available under virtual collocation for test access and maintenance. AT&T points to the testimony of SWBT witness Randall Butler where he states: "In a virtual collocation arrangement, neither ASI nor any other CLEC would have the ability to test or maintain the equipment."<sup>259</sup> AT&T believes that this statement contradicts with the terms and conditions of the Virtual Collocation Tariff.<sup>260</sup> AT&T notes that pursuant to Section 26.1 of the Collocation Tariff, collocators have the option to maintain and repair virtually collocated equipment themselves, a provision inconsistent with SWBT statement.<sup>261</sup> AT&T argues that SWBT should not be unilaterally permitted to modify the terms and conditions of virtual collocation.<sup>262</sup>

IP and Sage do not take any position on DPL No. 46, remote testing capability.<sup>263</sup>

IP and Sage support Rhythms' positions and arguments on the issue physical test access.<sup>264</sup>

WCOM generally supports the options outlined in the CLEC's testimony for DPL No. 46

WCOM supports Rhythms' positions on the issue of physical test access.

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<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> Turner Rebuttal at 7.

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> IP and Sage Initial Brief at 68.

<sup>264</sup> *Id.*

### *SWBT's Position*

SWBT does not believe that CLECs should be allowed access to the MDF.<sup>265</sup> SWBT cites security as the main reason for denying access to MDF and states that the *Advanced Services Order* gives SWBT the right to protect its equipment.<sup>266</sup> Instead, SWBT claims that it offers the CLECs a variety of testing options, which allow the CLECs to perform all the tests that SWBT can perform.<sup>267</sup> SWBT contends that CLECs can perform MLT tests and High Frequency tests 24 hours a day, 7 days a week in addition to testing the Automatic Number Identification (ANI)<sup>268</sup> and the Network Interface Device (NID).<sup>269</sup> SWBT disagrees that CLECs will not be able to determine if the correct line has been wired to the circuit.<sup>270</sup> SWBT states that CLECs can determine the proper loop by testing for ANI at the splitter pin.<sup>271</sup> SWBT asserts that CLECs have the ability to perform a test from the splitter that verifies continuity of wiring, presence of signal, condition of the loop, including presence or absence of load coils.<sup>272</sup> SWBT asserts that the mechanized test access it provides to the CLECs satisfies the requirements of the *Line Sharing Order*.<sup>273</sup> SWBT, however, indicates that when splitters are placed in SWBT's equipment area, the CLECs will have limited access to those splitters, and will be allowed access to those areas on an escorted basis.<sup>274</sup>

### *Arbitrators' Decision*

On testing, the *Line Sharing Order* states that:

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<sup>265</sup> Schlackman Direct at 41-42.

<sup>266</sup> *Id.*

<sup>267</sup> Schlackman Direct at 38-40.

<sup>268</sup> Automatic Number Identification (ANI): ANI provides for the transmission through the network of the BN (Billing Number), versus the telephone number, of the originating party. Harry Newton, *Newton's Telecom Dictionary*, (15<sup>th</sup> edition 1999) at 56.

<sup>269</sup> Network Interface Device (NID): 1. A device between a telephone protector and the inside wiring to isolate the customer's equipment from the network. Harry Newton, *Newton's Telecom Dictionary*, (15<sup>th</sup> edition 1999) at 584.

<sup>270</sup> Schlackman Rebuttal at 25.

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> SWBT Ex. 2, Rebuttal Testimony of Randall Butler "Butler Rebuttal" at 5 (October 20, 2000).

Thus we require that the incumbent LEC must provide requesting carriers access to the loop facility for testing, maintenance, and repair activities. We require that, at a minimum, incumbents must provide requesting carriers with loop access either through a cross-connection at the competitor's collocation space, or through a standardized interface designed to provide physical access for testing purposes. Such access must be provided in a reasonable and nondiscriminatory manner.<sup>275</sup>

The Arbitrators interpret the above language to mean that, while the incumbent LEC is required to provide CLECs non-discriminatory *access* for testing the loop facility, the incumbent is not required to provide *direct* physical access either to the loop or to the MDF. To the extent SWBT provides test access either through a cross-connection or through a standardized interface, the Arbitrators find that SWBT satisfies its legal requirement.

While the Arbitrators generally agree with the CLECs that testing the cross-connects at the MDF will minimize the chances of provisioning errors, such testing is not a viable option. The Texas Commission has never allowed direct access to the MDF due to security reasons.<sup>276</sup> The MDF is a very sensitive area where SWBT's lines as well as the lines of other CLECs terminate and cross-connect. A misplaced jumper, an open line, or an accidental short circuit can impair the ability of a user to access emergency services like 911. The FCC has recognized security of ILEC's equipment as a valid concern, indicating "that protection of [an ILEC's] equipment is crucial to the incumbent's own ability to offer service to their customers."<sup>277</sup> Therefore, the Arbitrators find that SWBT has the right to deny access to its MDF. Any advantage the CLECs may gain by having direct physical access to the frame does not justify the compromise to network integrity and security at the MDF.

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<sup>275</sup> *Line Sharing Order* ¶ 118.

<sup>276</sup> SWBT Physical Collocation Tariff Section(s) 6.1.1.D, 20.13.2, 20.13.3 and 20.13.4.

<sup>277</sup> Memorandum Opinion and Order and Notice of Proposed Rulemaking in CC Docket 98-147, *In the Matter of Wireline Services Offering Advanced Telecommunication Services* (rel. Aug. 7, 1998) (*Advanced Services Order*) ¶ 48.

Further, the *Line Sharing Order* requires SWBT to provide physical test access points to the CLECs.<sup>278</sup> In response, SWBT has agreed to provide the CLECs with a Mechanized Loop Test (MLT), which allows the CLECs to test the voice path from the voice switch to the customer premises in order to assure continuity. In addition, the ANI test will allow the CLEC to ensure that they are working with the proper customer's line. Also, SWBT has offered CLECs direct physical access to the test port on the splitter, which will allow the CLECs to test other parts of their xDSL circuit.<sup>279</sup> For instance, by using the Mechanized Loop Test (MTL), the voice circuit from the voice switch to the customer premises can be tested for continuity, as well as for other features of the voice circuit. Since SWBT is also offering direct physical access to a test port on the splitter, CLECs can isolate and test other elements of the xDSL circuit. In addition, using high frequency tests, CLECs can perform any technically feasible test utilizing the HFPL from the DSLAM to the customer premises, thus allowing the data path between the splitter and the end user to be tested. The Arbitrators find that the above battery of tests are sufficient for CLECs to test xDSL circuits, and the Arbitrators further find that such tests comply with the requirements of the *Line Sharing Order*. Thus, the Arbitrators once again refrain from requiring SWBT to offer direct physical access to the MDF.

In addition, AT&T has raised test access issues when the splitter is not located in the common area. SWBT indicated that, if the splitter is placed as part of its equipment lineup, it will manage the splitters pursuant to the terms of a virtual collocation arrangement.<sup>280</sup> In those circumstances, the Arbitrators are persuaded that the CLECs shall have maintenance and repair access to the splitters. Section 26.1 of the Texas Virtual Collocation Tariff reads:

“At SWBT's option in central offices, and at SWBT's option in other Eligible Structures where physical (including cageless) collocation space is available, or at the Collocator's option in CEV, huts and cabinets where physical collocation space is not available, SWBT will provide one of the following alternate types of virtual collocation:

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<sup>278</sup> See *Line Sharing Order* ¶ 175; § 512.319(h)(7)(i), “[ILECs] must provide, on a nondiscriminatory basis, physical loop test access points to requesting carriers at the splitter.”

<sup>279</sup> See *Interim Award* at 17-18 for a detailed discussion on the different xDSL circuit elements that can be tested using the MLT, ANI and High Frequency Tests.

<sup>280</sup> *Butler Direct* at 5.

- 1) Virtual collocation wherein SWBT maintains and repairs the virtually collocated equipment consistent with the rates, terms, and conditions, as provided for in Paragraphs 26.1 through 26.12.4 of this tariff section, or
- 2) Virtual collocation wherein the Collocator maintains and repairs the virtually collocated equipment as described in Paragraph 26.14 following and consistent with the rates, terms and conditions as provided for throughout this entire tariff section.”<sup>281</sup>

Although the Virtual Collocation Tariff may allow SWBT the option to manage splitters, the responsibility of the ILEC for providing test and maintenance access of splitters to a requesting CLECs is clear. The *Line Sharing Order* requires ILECs to “provide requesting carriers with access to the loop facility for testing, maintenance, repair activities.”<sup>282</sup> Therefore, the Arbitrators require SWBT to allow CLECs direct physical access to the splitter, regardless of the location of the splitter in the central office (e.g. where SWBT places an ILEC-owned splitter in its line-up). In such a scenario, the Arbitrators find that SWBT is not relieved of its obligation to provide test access to CLECs at the splitter. To balance the test access requirement with the security issues associated with such access, the Arbitrators require SWBT to allow CLECs test access to splitters not located in the common area pursuant to the security and safety procedures outlined in the Section 6.1.1.D of the Physical Collocation Tariff, for Cageless Collocation. Accordingly, collocators will have direct access to the ILEC-owned splitter, “24 hours a day, 7 days a week without need for security escort.”<sup>283</sup> The parties shall develop test, maintenance and repair access procedures by incorporating the security and safety policies for unescorted test access available pursuant to Texas Collocation Tariff, and submit it for Commission consideration as part of the contract language.

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<sup>281</sup> SWBT Virtual Collocation Tariff at 119.

<sup>282</sup> *Line Sharing Order* ¶118.

<sup>283</sup> SWBT Physical Collocation Tariff Section 6.1.1.D.

## VII. FIBER-FED DIGITAL LOOP CARRIER ISSUES

### DPL ISSUES 11-14, 16-19

11. Should SWBT be required to support CLEC access to line sharing as a UNE from the customer location to the central office, whether the loop is configured over all-copper or fiber-fed DLC facilities?
16. Should SWBT's Pronto offering (or a comparable offering by any ILEC) be provided as an unbundled network element? (IP, et al. Issue No. 18)

#### *CLEC's Position*

Rhythms states that in its recent *Line Sharing Reconsideration Order*, the FCC has further clarified that ILECs must provide the line sharing UNE over fiber-fed digital loop carrier ("DLC") configurations, such as Project Pronto, in keeping with the goal of encouraging competitive provisioning of xDSL services.<sup>284</sup> Rhythms indicates that the requirement to provide line sharing, as established in the *Line Sharing Order*, "applies to the entire loop where the incumbent has deployed fiber in the loop (e.g. where the loop is served by a remote terminal ("RT"))."<sup>285</sup> Rhythms explains that the FCC did not intend to limit an ILEC's obligation to provide CLECs with access to the fiber portion of a DLC loop for line sharing purposes by using the word "copper" in the rule implementing the *Line Sharing Order*, Rule § 51.319(h)(1); instead, the FCC requires the ILEC to unbundle "the high frequency portion of the local loop even where the incumbent LEC's voice customer is served by DLC facilities."<sup>286</sup>

Rhythms believes that the *Line Sharing Reconsideration Order* also requires that the components of the Project Pronto architecture be unbundled and made available as UNEs.<sup>287</sup> Rhythms asserts that CLECs must have the option of accessing the high frequency portion of the loop at the RT as well as at the central office.<sup>288</sup> Rhythms argues that the FCC did not intend to

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<sup>284</sup> Rhythms Initial Brief at 34, citing *Line Sharing Reconsideration Order* ¶ 10.

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

give the ILECs indirect control over loop access by virtue of the network upgrades they choose to deploy.<sup>289</sup>

Rhythms argues that the unrebutted evidence in this proceeding makes it clear that it is technically feasible to carry both voice and data on a single fiber. Rhythms argues that it is technically feasible to “fiber share” voice and xDSL traffic on the same fiber in the Project Pronto architecture.<sup>290</sup> Rhythms asserts that SWBT admitted that the NGDLCs being deployed by SWBT can be configured to carry xDSL traffic and voice traffic on the same fibers.<sup>291</sup>

In addition, Rhythms does not believe SWBT’s offer to allow CLECs to purchase the Broadband Service alleviates its obligation to provide unbundled access for the following reasons: First, the Broadband Service is limited to ADSL only;<sup>292</sup> second, Rhythms will be required to purchase the Broadband Service, “as is,” meaning that Rhythms will be unable to add new features and functions that SWBT chooses not to offer, making Rhythms nothing more than a reseller;<sup>293</sup> third, the Broadband Service is not subject to any of the protections offered to CLECs under Sections 251-252 of the Act for UNEs.<sup>294</sup>

In order to provide CLECs with a meaningful opportunity to compete in the advanced services market, Rhythms believes that the following components of the Project Pronto architecture should be unbundled and provided as UNEs:

- a. Lit Fiber Subloops between the remote terminal (RT) and the optical concentration device (OCD) in the central office (CO), consisting of one or more PVPs (“permanent virtual paths”) and/or one or more PVCs (“permanent virtual circuits”) at the option of the CLEC;<sup>295</sup>
- b. Copper Subloops consisting of the following segments:<sup>296</sup>

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<sup>289</sup> *Id.*

<sup>290</sup> SWBT Ex. 10, Direct Testimony of John Lube “Lube Direct” at 12. (September 5, 2000)

<sup>291</sup> *Id.* at 14-15.

<sup>292</sup> Rhythms Ex. 4, Direct Testimony of Terry Murray “Murray Direct” at 11. (October 6, 2000).

<sup>293</sup> *Pronto Waiver Order* ¶¶ 43-44.

<sup>294</sup> *Tr.* at 512-513.

<sup>295</sup> Donovan Direct, Exhibit JCD-7.

<sup>296</sup> Murray Direct at 51-52; Donovan Direct, Exhibit JCD-7.

- i. the copper subloop from the RT to the network interface device (NID) at the customer premises;
- ii. the copper subloop from the RT to the SAI ("serving area interface");
- iii. the copper subloop from the SAI to the NID at the customer premises.
- c. ADLU line cards owned by the ILEC in the NGDLC equipment in the RT;<sup>297</sup>
- d. A port on the OCD in the CO,<sup>298</sup> and
- e. Any combination thereof, including a line-shared xDSL loop from the OCD port to the NID.<sup>299</sup>

IP and Sage indicate that a recent D.C. Circuit decision affirms that ILEC advanced services such as NGDLC facilities are subject to Section 251 unbundling obligations. Specifically, IP and Sage mention that the appellate court held that the FCC may not permit an ILEC to avoid its Section 251 obligations when offering advanced services through an affiliate to offer those services.<sup>300</sup> Further, IP and Sage argue that the court held that advanced services are not to be treated differently from telecommunications services, even if the services do not rely on the traditional local loop.<sup>301</sup> Therefore, IP and Sage argue that this Commission must reject arguments espoused by SWBT that the NGDLC loop is not subject to Section 251 obligations, either because it is an alleged overlay network or because it is used solely by its affiliate to offer advanced services. IP and Sage also argue that the CLECs collectively have demonstrated conclusively that unbundling SWBT's NGDLC loop is justified because the cost, timeliness, quality, ubiquity, and impact on network operations associated with any alternatives unequivocally support such a determination.<sup>302</sup>

IP and Sage assert that SWBT incorrectly dwells on the FCC's dated definition of subloops and its four-part test for unbundling packet switching from the *UNE Remand Order*. IP and Sage believe that no viable alternatives exist to unbundling NGDLC under the impair

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<sup>297</sup> Donovan Direct at 13.

<sup>298</sup> Murray Direct at 51-52; Donovan, Exhibit JCD-7.

<sup>299</sup> *Id.*

<sup>300</sup> *Association of Communications Enterprise v. FCC*, 253 F.3d 622 (D.C. Cir. 2001).

<sup>301</sup> *Id.*

<sup>302</sup> *See, e.g.*, Gentry Direct at 31-41; Drake Direct at 3-4; Turner Direct at 32-36; Donovan Direct at 57-63.

analysis and that unbundling "Project Pronto" promotes the rapid introduction of competition for advanced services in the residential and small business marketplace; promotes facilities-based competition, investment, and innovation for new innovative xDSL services that can be offered to customers; and ensures the certainty requesting carriers require to provide advanced services ubiquitously throughout SWBT's territories.<sup>303</sup>

AT&T argues that CLECs are entitled to access an entire unbundled loop, irrespective of the telecommunications service that a carrier wishes to provide, and regardless of the underlying loop architecture the SWBT uses to provide the loop functionality.<sup>304</sup> AT&T argues that nothing in SWBT's new loop architecture changes the fact that the connection from the customer's premises to the central office is still a "loop."<sup>305</sup> In addition, AT&T believes that the electronics associated with the next-generation loop architecture should be considered part of the loop.<sup>306</sup> Specifically, AT&T asserts that the line cards with DSLAM functionality and Optical Concentration Devices (OCDs) perform transmission-oriented functions when placed in next-generation loop architecture (*i.e.*, when transmission electronics are placed in the remote terminal that must work in conjunction with central office-deployed electronics). During the hearing, AT&T points out that during the hearing SWBT indicated that line cards provide "part of the functionality for both POTS and xDSL service to an end user, part of the POTS functionality and part of the DSLAM functionality. It does not do either of those totally by itself."<sup>307</sup> AT&T asserts that even if physical, adjacent, and virtual collocation may be useful to some competitors in limited circumstances remote terminal collocation is not a practical mass-market solution and cannot provide a substitute for access to an entire loop.<sup>308</sup>

In addition to the many physical limitations that preclude physical collocation at the remote terminal, AT&T argues that physical collocation is economically unsustainable.<sup>309</sup> AT&T believes that the economies and costs are clearly prohibitive for collocation at remote

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<sup>303</sup> IP and Sage Initial Brief at 44.

<sup>304</sup> Turner Direct at 32-34.

<sup>305</sup> AT&T Initial Brief at 18-22.

<sup>306</sup> *Id.*

<sup>307</sup> Tr. at 647.

<sup>308</sup> Turner Direct at 32-34.

terminals that each serve only a few hundred customers, rather than the thousands reachable via central office collocation.<sup>310</sup> AT&T suggests that the economic reality of adjacent collocation is that remote deployment of transmission-related electronics by competitive LECs is unlikely to occur in most areas and is not feasible except in the most extraordinary circumstances.<sup>311</sup> Therefore, AT&T argues, pursuant to the FCC's definition, ILECs must provide access to subloops at any location where the loop switches from copper to fiber, regardless of whether such point is located at: (1) a remote terminal, (2) a feeder-distribution interface, (3) a neighborhood pole or pedestal, (4) a serving area interface ("SAI") point, (5) the minimum point of entry (for multiple dwelling units), (6) any other point expressly specified by the FCC, such as the Network Interface Device, or (7) any other technically feasible point.<sup>312</sup>

WCOM likewise indicates that SWBT should be required to unbundle Pronto and also provide sub-loop unbundling as required by the FCC and this Commission. WCOM believes that CLECs are impaired by lack of access to line sharing over DLC as a UNE because CLECs face "substantive differences" in the ability to collocate and access subloops at remote terminals.<sup>313</sup> Specifically, WCOM believes that ASI has much more favorable access to subloops as part of Project Pronto than CLECs that try to collocate at the remote terminals.<sup>314</sup> Accordingly, WCOM argues that SWBT must provide CLECs reasonable and non-discriminatory access to subloops at remote terminals. Sprint did not specifically present a position with respect to this issue.

### ***SWBT's Position***

SWBT opposes the CLECs' efforts to gain access to "Project Pronto" as an unbundled network element. SWBT has offered to provide CLECs with the Broadband offering. SWBT claims that the pricing scheme for the Broadband services it will offer to CLECs uses forward

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<sup>309</sup> *Id.* at 34

<sup>310</sup> AT&T Initial Brief at 27-28.

<sup>311</sup> *Id.*

<sup>312</sup> *UNE Remand Order* ¶¶ 205-206.

<sup>313</sup> WCOM Initial Brief at 14.

<sup>314</sup> *Id.*

looking costing principles and methodologies used to price UNEs.<sup>315</sup> SWBT believes that by offering CLECs the ability to provision data services over the Pronto architecture, CLECs will be able to serve consumers in the same manner as its affiliate, ASI.<sup>316</sup> However, SWBT strongly opposes any attempt by the Commission to unbundle the Pronto architecture.

SWBT argues that the FCC has only required line sharing over the copper portion of the loop, and that this commission should not require SWBT to unbundle the fiber fed NGDLC facilities, as "Pronto" is an overlay network and not subject to 251 requirements.<sup>317</sup> SWBT indicates that the FCC is currently considering this issue and this commission should not take action until the FCC weighs in on the subject.<sup>318</sup> SWBT believes that the Line Sharing Order clearly states that line sharing is only required over home run copper loops or copper subloops. In addition, SWBT indicates that line sharing cannot occur over the Pronto architecture as the signals carried from the remote terminal to the central office are not line-shared at all, but rather carried on two separate fibers.<sup>319</sup> SWBT argues that it is therefore not technically feasible to line share over the fiber fed DLC system.<sup>320</sup>

SWBT claims that it would be unlawful to adopt the CLECs' proposal to create new UNEs out of SWBT's Pronto architecture because they have not sufficiently developed the record in this proceeding.<sup>321</sup> SWBT believes that the record consists solely of vague, unsupported assertions that the CLECs somehow will be competitively harmed, or will face increased costs if the Commission does not require the unbundling of Project Pronto.<sup>322</sup> SWBT argues that the CLECs failed to provide any "objective market-based evidence" that would indicate (i) what costs they would incur using alternatives to Project Pronto UNEs, (ii) the time

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<sup>315</sup> SWBT Ex. 3, Direct Testimony of Carol Chapman "Chapman Direct" at 14. (September 5, 2000).

<sup>316</sup> *Id.* at 9-10.

<sup>317</sup> *Id.* at 11-18.

<sup>318</sup> SWBT Initial Brief at 61.

<sup>319</sup> Lube Direct at 9-10.

<sup>320</sup> *Id.*

<sup>321</sup> SWBT Initial Brief at 51.

<sup>322</sup> *Id.*

in which the alternatives would be available, (iii) the quality of service that will be provided over the alternatives, and (iv) whether the alternatives are ubiquitously available.<sup>323</sup>

Furthermore, SWBT argues that the CLECs will never be able to satisfy the FTA's "impair" standard because Pronto is not a replacement to SWBT's existing network and therefore, Pronto will not affect the availability of SWBT's existing network to support the provision of xDSL services, including line sharing.<sup>324</sup> SWBT asserts that CLECs are able to provide xDSL service to end users using either "their own central office-based DSLAMs and SWBT's all-copper loops or their own remotely-located DSLAMs and SWBT's copper subloops."<sup>325</sup> Because of the numerous service-offering alternatives available to CLECs, SWBT asserts that the lack of unbundled access to SWBT's Pronto architecture clearly does not "impair" the CLECs' ability to provide advanced services.<sup>326</sup>

SWBT also argues that it cannot legally be required to offer UNEs for line sharing over fiber because "Pronto" necessarily contains a component of packet switching and the FCC has already found that SWBT does not have to unbundle packet switching except in very limited circumstances that are not present in this case. SWBT indicates that none of the criteria in the UNE Remand Order are met and in fact under Project Pronto, those criteria will never be met.

SWBT argues that under the *UNE Remand Order* it is only obligated to provide unbundled access to packet switching where each of the following conditions are satisfied:

- (i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (*e.g.*, end office to remote terminal, pedestal or environmentally controlled vault);
- (ii) There are no spare copper loops capable of supporting the xDSL services the requesting carrier seeks to offer;

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<sup>323</sup> *Id.* at 52.

<sup>324</sup> Lube Direct at 3-4; *Pronto Waiver Order* at ¶ 25.

<sup>325</sup> SWBT Ex. 11, Rebuttal Testimony of John Lube "Lube Rebuttal" at 22 (October 20, 2000).

<sup>326</sup> *Id.* at 23.

- (iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access Multiplexer at the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by § 51.319(b); and
- (iv) The incumbent LEC has deployed packet switching capability for its own use.<sup>327</sup>

SWBT states that the CLECs have not demonstrated that any of these four conditions exist in the case of Project Pronto. SWBT takes the position that Project Pronto does not displace any copper loops, and in fact, will likely free up now-working copper loops for future use by CLECs to provide xDSL services.<sup>328</sup> Moreover, SBC's voluntary commitments, adopted as conditions in the FCC's *Project Pronto Order*, enhance the CLECs' opportunity to collocate their own DSLAMs at the SWBT RT sites.<sup>329</sup> Specifically, SWBT will, upon a CLECs' request, either increase the size of future RT structures or provide the CLEC with an adjacent cabinet structure; further, SWBT will allow collocation (in accordance with existing collocation rules) at any technically feasible interconnection point.<sup>330</sup> Finally, SWBT is not deploying packet switching for its own use but is doing so exclusively for the CLECs use in provisioning xDSL services to their own end-users.<sup>331</sup> SWBT believes it is clear that all four conditions will never exist simultaneously in the Pronto architecture.

Finally, SWBT believes that the Commission could not adopt the CLECs' unbundling proposal because the evidence is insufficient for the Commission to find, as it must under Section 261(c) of the Act, that such a state-imposed requirement is "necessary" to "further competition in the provision of telephone exchange service or exchange access."<sup>332</sup> SWBT asserts that the requirements of Section 261(c) are mandatory, and are incremental to the

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<sup>327</sup> 47 C.F.R. § 51.319(c)(3)(B).

<sup>328</sup> Lube Rebuttal at 26-27; Chapman Direct at 11.

<sup>329</sup> *Pronto Waiver Order* at ¶¶ 34-35, 61.

<sup>330</sup> Chapman Direct at 12.

<sup>331</sup> Lube Rebuttal at 28.

<sup>332</sup> SWBT Initial Brief at 58, citing FTA § 261(c).

requirements of Sections 251(d)(2) and 251(c)(6).<sup>333</sup> Last, SWBT argues that public policy dictates that this commission should not force SWBT to offer UNEs for line sharing over Pronto as that decision would deter competitive entry and build out for broadband competition and may force SWBT to reconsider its investment.

### ***Arbitrators' Decision***

In the *Line Sharing Reconsideration Order*, the FCC clarified that ILECs must allow line sharing, even when the ILEC has deployed fiber-fed DLC facilities, including SWBT's Project Pronto.<sup>334</sup> The FCC stated:

We clarify that the requirement to provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop (*e.g.*, where the loop is served by a remote terminal). Our use of the word "copper" in section 51.319(h)(1) was not intended to limit an incumbent LEC's obligation to provide competitive LECs with access to the fiber portion of a DLC loop for the provision of line shared xDSL services. As noted above, incumbent LECs are required to unbundle the high frequency portion of *the local loop* even where the incumbent LEC's voice customer is served by DLC facilities.<sup>335</sup> The local loop is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end user customer premises, including inside wire owned by the incumbent LEC.<sup>336</sup> By using the word "transmission facility" rather than "copper" or "fiber," we specifically intended to ensure that this definition was technology-neutral. The "high frequency portion of the loop" is defined as the frequency range above the voiceband on a copper loop facility that is being used to carry analog circuit-switched voiceband transmissions. Thus, although the high frequency portion of the loop network element is limited by technology, *i.e.*, is only available on a copper loop facility, *access to* that network element is not limited to the copper loop facility itself. When we concluded in the *Line Sharing Order* that incumbents must provide unbundled access to the high frequency portion of the loop at the remote terminal as well as the central office, we did not intend to limit competitive LECs' access to fiber feeder subloops for line sharing.<sup>337</sup>

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<sup>333</sup> *Id.*

<sup>334</sup> *Line Sharing Reconsideration Order* ¶ 10.

<sup>335</sup> *See Line Sharing Order* ¶ 91.

<sup>336</sup> *UNE Remand Order*, App. C; 47 C.F.R. § 51.319(a)(1).

<sup>337</sup> *Line Sharing Reconsideration Order* ¶ 10.

Thus, the FCC indicated that it would not allow an ILEC to foreclose the possibility of line sharing simply by the way the ILEC configured the network. SWBT has argued throughout this proceeding that the Texas Commission does not have authority to unbundle Project Pronto. However, it is clear that Congress and the FCC contemplated that States would impose additional requirements consistent with the Act and prior FCC mandate.<sup>338</sup> Specifically, with regard to advanced services, the FCC has encouraged states, "to impose additional, pro-competitive requirements consistent with the national framework established in this order."<sup>339</sup> The Arbitrators believe that the record in this case clearly establishes that the transmission facilities that comprise SWBT's Project Pronto are part of the unbundled loop element and without access to those facilities CLECs would be "impaired" in their ability to provision line sharing.

Because no party has argued that there are proprietary concerns, the FCC requires unbundling if lack of access to the network element impairs a carrier's ability to provide the services it seeks to offer.<sup>340</sup> Failure of an ILEC to provide access to a network element "impairs" the requesting carrier only if "lack of access to that element materially diminishes a requesting carrier's ability to provide the service it seeks to offer."<sup>341</sup> FCC Rule 51.317(b) requires that the Commission consider the cost, timeliness, quality, ubiquity, and impact on network operations that may be associated with any alternatives to unbundling. Other factors, such as promotion of the rapid introduction of competition; facilities-based competition, investment, and innovation; or certainty to requesting carriers regarding the availability of the element may also be considered by the Commission.<sup>342</sup>

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<sup>338</sup> *UNE Remand Order* ¶ 154; *Line Sharing Order* ¶ 159.

<sup>339</sup> *Line Sharing Order* ¶ 159.

<sup>340</sup> 47 U.S.C § 251(d)(2).

<sup>341</sup> *UNE Remand Order* ¶ 51; 47 C.F.R. § 51.317(b)(1).

<sup>342</sup> See 47 C.F.R. § 51.317(c). In addition, the Arbitrators reject SWBT's argument that Section 261(c) of the Act precludes States from designating UNEs, unless such regulations are deemed "necessary" under 261(c), notwithstanding the impair test set forth in Section 251. Section 261(c) "applies only to those additional state requirements that are not promulgated pursuant to section 251 or any other section in Part II of the Act." *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 807 (8<sup>th</sup> Cir. 1997). Therefore, the Arbitrators find that Section 261(c) is inapplicable to the unbundling analysis of Project Pronto.

Citing the FCC's unbundling analysis, SWBT argued that alternatives exist for CLECs; thus, making it impossible to establish that lack of access to Project Pronto as a UNE will material diminish CLECs' ability to provide advanced services.<sup>343</sup> The Arbitrators find, however, that the evidence in the record establishes that the alternatives upon which SWBT relies are either not viable, not concrete, or do not offer comparable service.<sup>344</sup>

First, the Arbitrators find that SWBT's attempt to offer CLECs "resale" in lieu of UNEs is problematic. The wholesale broadband service is not a comparable alternative to UNEs because competitors have no assurance that SWBT will not change the offering in such a way as to make it unsuitable as a manner in which to provide services that the CLEC seeks to offer.<sup>345</sup> Indeed, the FCC assigns little weight in the "impair" analysis to the ability of a requesting carrier to use the ILECs' resold services as alternatives to UNEs.<sup>346</sup> SWBT's proposal is not subject to any of the requirements of Section 252. Thus, SWBT can restrict the offering in such a way as to benefit its data affiliate and more importantly can rescind or alter its service offering at will.<sup>347</sup> CLECs are prohibited from changing the offer in any manner and are thereby prohibited from introducing any product differentiation to consumers. In addition, although SWBT's proposed changes are purportedly different from a traditional wholesale discount, CLECs, as well as this Commission, are prohibited from scrutinizing the proposed pricing scheme in any manner.<sup>348</sup>

Second, use of all-copper loops to provide xDSL services merely provides CLECs with an option that SWBT itself is spending billions of dollars to avoid. As xDSL is distance sensitive, provisioning over Project Pronto, where the goal for the copper portion of the loop is 12,000 ft., rather than home-run copper, provides inherent, enhanced quality. The FCC

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<sup>343</sup> SWBT Initial Brief at 52-53.

<sup>344</sup> For instance, SWBT's Broadband Service offering provides no assurances to CLECs or the Commission that the service will not be withdrawn, will be appropriately priced after review by the Commission, will offer all technically feasible flavors of xDSL, and will offer additional functionality, as developed, that is technically feasible.

<sup>345</sup> *UNE Remand Order* ¶ 69.

<sup>346</sup> *Id.* ¶ 67.

<sup>347</sup> Tr. at 513.

<sup>348</sup> (To rebut the pricing concern, SWBT argues that its wholesale offering is of a different nature than a true resold services. SWBT believes that because it has offered the Broadband Service at TELRIC prices, it overcomes the scrutiny of the "resold" services argument. The Arbitrators believe that SWBT misses the point. The proposed pricing for the broadband service has undergone none of the scrutiny that pricing for unbundled elements would by CLECs and this Commission.) See SWBT Reply Brief at 31-32.

addressed SWBT's assertion that spare copper is sufficient by indicating that a competitor [should] be able to provide over the spare copper the same level of quality advanced services to its customer as the incumbent LEC.<sup>349</sup> In addition some areas include no spare copper. Furthermore, CLECs have no guarantee that the spare copper will remain once Pronto is ubiquitously deployed. Thus, while "home-run" copper alternatives may be present in some situations, the Arbitrators are not convinced that these provide the same level of service viable or permanent.<sup>350</sup>

Third, because of the way SWBT has designed Project Pronto, CLECs are in essence denied the ability to collocate DSLAMs at SWBT remote terminal (RT) sites. SWBT indicated that it has made voluntary commitments as a solution to this problem by increasing the size of RTs and providing adjacent cabinet structures.<sup>351</sup> However, because SWBT chose to hard wire the RT, a CLEC may have to pay between \$15,000 and \$30,000 per remote terminal for access to the subloop.<sup>352</sup> Uncontroverted evidence in this record indicates that SWBT designed the RTs in such a manner as to preclude any reasonable CLEC access to sub-loops at the RT even though vendors manufacture RTs with cross-connect functions that allow access to subloops.<sup>353</sup> The simple fact that SWBT has hardwired its equipment at the RT and CLECs will be forced to pay for a work-around or to build adjacent collocation space supports a finding that SWBT cannot meet its burden to be relieved of its unbundling obligation. In sum, the evidence presented to the Arbitrators indicates that collocating a DSLAM at the remote terminal will in most cases not only prove to be uneconomical, but also technically problematic.

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<sup>349</sup> In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29, at fn. 741, (January 22, 2001).

<sup>350</sup> Tr. at 454-458.

<sup>351</sup> Lube Direct at 27-28.

<sup>352</sup> Tr. at 450-453; *See* Rhythms Ex. 17. (The record indicates that these costs do not include other collocation costs. CLECs may be obligated to pay between \$240,000 and \$720,000 per central office in order to access subloops through the ECS developed by SWBT because of the number of remote terminals (16-24) per central office.)

<sup>353</sup> Tr. at 600-602; Rhythms Ex. 12A, SBC's Project Pronto Loop Infrastructure Deployment Planning Guidelines (August 21, 2000) at 87 (SWBT-TX #22168 IP 000222).

Finally, options for CLECs to replicate networks in lieu of gaining unbundled access have consistently been rejected.<sup>354</sup> Requiring CLECs to invest in duplicative facilities would delay market entry and postpone benefits to consumers.<sup>355</sup> The \$6 billion investment in SWBT's already established network would most certainly translate into substantially greater costs for CLECs to duplicate. Accordingly, the Arbitrators assign little weight to this alternative.

In addition to asserting that alternatives are available in lieu unbundling Pronto, SWBT has also argued that line sharing does not technically occur when provisioning service over the Pronto architecture because the data and the voice are transported from the remote terminal to the central office on different fibers. Thus, SWBT argues, line sharing as defined by the FCC is not technically feasible when NGDLC is deployed. However, the Arbitrators find that evidence in this proceeding clearly establishes that it is technically feasible to carry both voice and data on a single fiber. SWBT witness Mr. Lube admitted it is technically feasible to "fiber share" voice and xDSL traffic on the same fiber in the Project Pronto architecture.<sup>356</sup> Specifically, Mr. Lube acknowledged that the Alcatel NGDLCs being deployed throughout the SBC territory under Project Pronto—the Litespan 2000 and the Litespan 2012—can be configured to carry xDSL traffic and voice traffic on the same fibers.<sup>357</sup>

Furthermore, the FCC defined the local loop as a transmission facility between a distribution frame or its equivalent and the loop demarcation point at the end user premises.<sup>358</sup> The FCC reasoned that, although the high frequency portion of the loop is limited by technology (*i.e.*, the HFPL refers to the manner in which line sharing is accomplished on a copper loop), access to the HFPL is not limited to the copper loop.<sup>359</sup> The FCC concluded that its *Line Sharing Order* imposed no limitations on CLEC access to fiber feeder subloops for line sharing.<sup>360</sup>

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<sup>354</sup> *UNE Remand Order* ¶ 355; *First Report and Order* ¶ 378.

<sup>355</sup> *See First Report and Order* ¶ 378.

<sup>356</sup> Lube Direct at 12.

<sup>357</sup> *Id.* at 14-15. (In addition, the AMF UMC 1000 is deployed in smaller locations and carries voice and data traffic on the same fibers.)

<sup>358</sup> *Line Sharing Reconsideration Order* ¶ 10.

<sup>359</sup> *Id.*

<sup>360</sup> *Id.*

Accordingly, the Arbitrators find that line sharing is technically feasible over the Pronto architecture.

SWBT also makes a distinction regarding its unbundling obligations by the type of traffic carried over a particular loop. For example, SWBT has recognized a CLEC's right to obtain an unbundled 8db loop through the Pronto architecture.<sup>361</sup> However, with regard to the provision of xDSL, SWBT has steadfastly adopted the opposite position, even though the overall characteristics of the loop plant are the same. The FCC has indicated that there are no restrictions on the type of service a CLEC may provide through the use of a UNE loop, except that the service must be a telecommunications service.<sup>362</sup> Under this rationale, the FCC in its *Line Sharing Reconsideration Order*, clarified that an ILEC must allow line sharing even where the ILEC has deployed architecture such as SWBT's "Project Pronto."<sup>363</sup> The Arbitrators find that as the network architecture changes, SWBT should not be relieved of obligations that are already present, namely to provide CLECs access to the loop on an unbundled basis. The Arbitrators find no evidence in the record to support the proposition that Project Pronto or the introduction of fiber into loop plant changes the underlying nature of the transmission facility; it is still a loop. As the FCC has already determined that CLECs are impaired without access to the unbundled loop element, the Arbitrators need not make an independent determination with respect to a Project Pronto loop. Accordingly, the Arbitrators find that a loop is a loop, regardless of whether it is all copper or a combination of copper and fiber.<sup>364</sup> This is consistent with prior Commission rulings. For instance, this Commission in the Mega-Arbitration ruled that where a loop is divided into feeder and distribution sections by a DLC located remotely,

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<sup>361</sup> Tr. at 458-461.

<sup>362</sup> See *UNE Remand Order* ¶ 177; *Local Competition Order* ¶ 292.

<sup>363</sup> *Line Sharing Reconsideration Order* ¶ 10.

<sup>364</sup> Although the Arbitrators were presented with evidence concerning introduction of fiber into the loop, the Arbitrators believe that it is possible for SWBT, as a part of Project Pronto, to roll-out additional network designs (e.g. fiber directly to the end user). By including the former design within the definition of the loop unbundled network element we do not intend to exclude the latter from that definition. The Arbitrators simply were not presented with that scenario, although a similar analysis with respect to a "fiber-to-the curb" design appears reasonable and consistent with this Award.

SWBT must provide access to the entire loop, from central office to customer premises.<sup>365</sup> Similar logic applies in the case of SWBT's Project Pronto.

In sum, the Arbitrators find that no viable alternatives exist with respect to provisioning xDSL through Project Pronto. Likewise, the Arbitrators find that line sharing is technically feasible over Project Pronto. Finally, the Arbitrators find that the transmission facility, whether it is end-to-end copper, or a configuration of copper and fiber with a remote terminal and remotely located electronics, is within the definition of an unbundled loop. Consequently, SWBT must provide CLECs access to the unbundled loop element from the demarcation point at the customer's premises to the termination (port) on the OCD in the central office, including the associated electronics at the RT and the CO (discussed specifically below).

Although the Arbitrators have found that the Pronto transmission facilities must be provided as part of the unbundled loop element, the Arbitrators are not convinced, as AT&T has argued, that the next generation loop electronics, such as line cards with DSLAM and splitter functionality, can be categorized as part of the loop. Although the Arbitrators believe that this argument has merit, the FCC currently includes DSLAMs within the definition of packet switching.<sup>366</sup> Although the Arbitrators may disagree with that finding, the Arbitrators decline to adopt the position in this Arbitration that the necessary loop electronics used to provision service over Project Pronto are included as part of the loop. The Arbitrators note that the FCC is currently considering this issue, specifically whether to reevaluate its position with respect to new architectures being developed to deploy advanced services.<sup>367</sup> The Arbitrators are hopeful that the FCC will expeditiously address this question, but until such time, we cannot support a finding in direct contradiction. Notwithstanding the fact that the Arbitrators decline to follow

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<sup>365</sup> *Application of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement Between AT&T and Southwestern Bell Telephone Company, et al.*, Docket Nos. 16226, et al., Arbitration Award I – Nov. 7, 1996; Arbitration Award II – Sept. 30, 1997; Arbitration Award III – Dec. 19, 1997, collectively ("Mega-Arbitrations").

<sup>366</sup> *UNE Remand Order* ¶ 304.

<sup>367</sup> Third Report and Order on *Reconsideration and Third Further Notice of Proposed Rulemaking in CC Docket 98-147 and Sixth Further Notice of Proposed Rulemaking in CC Docket 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Dockets 98-147 and 96-98 (rel. Jan. 19, 2001) ("Second Collocation FNPRM")

AT&T's suggestion of including the necessary electronics as part of the loop element, the Arbitrators believe that this record provides evidence that the FCC's criteria for unbundling packet switching are met when provisioning service through Project Pronto.

The FCC has defined packet switching, "as the function of routing individual data units, or 'packets,' based on address or other routing information contained in the packets."<sup>368</sup> The FCC further indicated that, "the packet switching network element includes the necessary electronics (e.g. routers and DSLAMs)."<sup>369</sup> Additionally, the FCC has indicated that four criteria must be met in order for an ILEC to be required to unbundle packet switching.<sup>370</sup> Because packet switching is a necessary component of the Pronto architecture, if CLECs are entitled to access the transmission facility supporting that architecture, packet switching must be included in the analysis.

SWBT has asserted that the CLECs have not met the criteria outlined by the FCC on this record to establish that packet switching should be provisioned as a UNE.<sup>371</sup> As outlined below, the Arbitrators disagree. The Arbitrators find that this record clearly establishes that SWBT must unbundle the packet switching functionality when provisioning xDSL service through Project Pronto.

First, the Arbitrators believe that SWBT has deployed DLC or NGDLC in which fiber optic facilities replace copper facilities in the distribution section. SWBT acknowledges that the objective behind the rollout of Project Pronto is to reach as many consumers as possible, many which were unreachable without it. SWBT's argument that this is an overlay network is not persuasive. Where no copper currently exists, the Pronto architecture will be the only available

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<sup>368</sup> *UNE Remand Order* ¶ 304.

<sup>369</sup> *Id.*

<sup>370</sup> 47 C.F.R. § 51.319(c)(3)(B); *UNE Remand Order* ¶ 313. (The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section; There are no spare copper loops capable of supporting the xDSL services the requesting carrier seeks to offer; The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access Multiplexer at the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by § 51.319(b); The incumbent LEC has deployed packet switching capability for its own use.)

means to serve a customer.<sup>372</sup> The Arbitrators interpret this prong of the test broadly, as a literal reading proposed by SWBT would make this an impossible hurdle to clear. After carefully reviewing the FCC's rationale for unbundling packet switching in limited circumstances, the Arbitrators are convinced that the FCC would not have devised a set of criteria that could never be met.<sup>373</sup> Clearly, the packet switching exception criteria was put in place for unique situations where CLECs' nondiscriminatory access was limited by the actions of the ILEC. This is one such occasion.

Second, the Arbitrators are not persuaded by the evidence that there are spare copper loops capable of supporting xDSL services the CLECs seek to offer. In some places, spare copper will be available. In others, the rollout of Pronto may indeed free up additional copper plant that CLECs can use to support some xDSL services.<sup>374</sup> However, the Arbitrators believe that the evidence in this record supports the finding that without access to Pronto, including the packet switching functionality, CLECs will be impaired. Pronto was devised to reach consumers who otherwise could not be served over the existing network. By some estimates, nearly a quarter of customers who do not have access to ADSL today, will be able to obtain ADSL service after Pronto is rolled-out.<sup>375</sup> Because line sharing generally cannot be supported on loops in excess of 18,000 feet, CLECs will be denied the opportunity to provide services to customers whose loops exceed that length. In other words, where spare copper is in fact available, the quality of service generally between the different distribution methods is somewhat disparate, especially in distance sensitive applications such as line sharing. This disparity does not meet the condition that spare copper loops should be able to "offer the same level of quality for advanced services."<sup>376</sup>

Third, the Arbitrators believe that SWBT does not allow CLECs to collocate DSLAMs at the remote terminal on the same terms and conditions that it provides to itself. Without equal

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<sup>371</sup> SWBT Initial Brief at 55.

<sup>372</sup> Tr. at 458.

<sup>373</sup> See *UNE Remand Order* ¶ 313.

<sup>374</sup> Chapman Direct at 16.

<sup>375</sup> Rhythms Ex. 13A at 4.

<sup>376</sup> *UNE Remand Order* ¶ 313.

access, SWBT "can effectively deny competitors entry into the packet switching market."<sup>377</sup> Under SWBT's current deployment plans, SWBT has installed a system utilizing line cards, which provide the DSLAM and splitter functionality that are placed into the remote terminal chassis. However, SWBT has refused CLECs the right to own and collocate their own line cards. Also, by hard wiring the remote terminal SWBT has effectively denied CLECs access to subloops. In addition, a CLEC wishing to collocate a standalone DSLAM into the RT will often run into space constraints, not to mention local regulations that may make it impossible to construct adjacent structures. The evidence indicates that SWBT designed many of its RTs to fit only SWBT equipment and did not consider CLEC collocation needs in its planning designs. In response to criticism, SWBT has "voluntarily" offered to either increase the size of future RTs, or construct an adjacent structure for a requesting CLEC.<sup>378</sup> However, the Arbitrators do not agree that these "voluntary" commitments put CLECs in the position to receive "the same terms and conditions that apply to SWBT's own DSLAM," a standard which this Commission adopted in the first xDSL Arbitration.<sup>379</sup> Indeed, evidence in the record supports the proposition that only in unique circumstances will it be remotely economical for CLECs to pay for an ESC and install their own DSLAM.<sup>380</sup>

Fourth, SWBT's argument that it is currently not deploying packet switching for itself is not compelling. The Arbitrators disagree with SWBT's position that the deployment of Pronto and the associated packet switching components, is not for its own use. SBC initiated Project Pronto in order to serve the greatest amount of its consumers as possible. SWBT indicated that it did not take into account any CLEC needs when designing and deploying the Pronto system, yet it then argues that it has deployed packet switching functionality solely for CLECs' use. Furthermore, although the separate affiliate structure is currently in place, the existence of ASI through the SBC-Ameritech Merger Order has been called into question recently and its future

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<sup>377</sup> *Id.*

<sup>378</sup> Lube Rebuttal at 27-28.

<sup>379</sup> *Petitions of Rhythms Links, Inc. and Dieca Communications, Inc. d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company*, Docket Nos. 20226 and 20272, "DSL Arbitration Award" at 30 (November 30, 1999).

<sup>380</sup> Tr. at 450-451.

longevity is clearly questionable.<sup>381</sup> The Arbitrators do not believe that SWBT should be able to escape this prong of the test through legal semantics.

Accordingly, the Arbitrators find that the record in this case demonstrates that the packet switching functionality incorporated within the particular architecture that SWBT is deploying should be unbundled for the limited purpose of providing CLECs access to Project Pronto. The Arbitrators note that the FCC already determined that CLECs were impaired without access to packet switching.<sup>382</sup> The Arbitrators need not independently perform additional “impair” analysis regarding packet switching, as we have found that SWBT’s deployment of the Pronto architecture fits within the limited exceptions outlined in the UNE Remand Order.<sup>383</sup> The Arbitrators believe that where SWBT has deployed remote terminals with NGDLC, SWBT must provide CLECs with access to the transmission facility from the customers’ premises to the central office, including access to unbundled packet switching in order to transport the data signals from the RT to the terminating port on the OCD. The Arbitrators do not find that packet switching functionality should be unbundled generally, as we are cognizant of the FCC’s limited exceptions for packet switching as indicated above. However, the evidence presented before us clearly demonstrates that the FCC’s exception criteria are met by the way in which SWBT has designed the network.

The Arbitrators agree with SWBT that the FCC’s packet switching “test” will not be met in totality for every situation that arises. However, the Arbitrators also believe it is axiomatic that the FCC would not impose a set of criteria that could never be met, as SWBT has asserted. If we were convinced that a case by case approach used to determine whether the FCC’s packet switching criteria were met for every remote terminal was a workable alternative, we might have adopted such an approach here. However, in order to carry out Congress’ mandate to promote rapid deployment of broadband services and to ensure consistency and reliability for all carriers, the Arbitrators believe that we must consider SWBT’s network overall. The evidence in this record supports the finding that the concerns regarding remote terminal access laid out by the

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<sup>381</sup> *Association of Communications Enterprises v. FCC*, No. 99-1441 (D.C. Cir. Jan. 9, 2001).

<sup>382</sup> *UNE Remand Order* ¶ 309 (The FCC declined to unbundle packet switching generally based on other criteria).

<sup>383</sup> *Id.* ¶ 313.

FCC are present globally in SWBT's network when the transmission facility is engineered like that in Project Pronto. On that basis, we find that SWBT must provide CLECs with unbundled packet switching. Thus, the Arbitrators order SWBT to unbundle the packet switching functionality associated with NGDLC technology, in order for CLECs to obtain access to the transmission facility from the demarcation point at the customers' location through the remote terminal and terminating in a port on the OCD in the central office.

Finally, the Arbitrators are troubled that SWBT has espoused the position that if the Commission determined that Project Pronto is required to be unbundled pursuant to 251, SWBT might be forced to reconsider its investment in rolling out its broadband product.<sup>384</sup> This position, in and of itself, provides clear and convincing evidence that SWBT continues to possess market power and can unilaterally determine who receives, and far more compelling, who does not receive broadband services. Notwithstanding the Arbitrators' earlier analysis that SWBT should be required to provide CLECs with access to Pronto functionality based on the factors outlined by the FCC, this statement provides additional support that meaningful competition can only be accomplished by allowing CLECs access. If one company, in this case, SWBT, can unilaterally determine when and if citizens receive broadband service, it is up to this Commission to continue fostering competition by requiring element unbundling when clearly supported by evidence. Such is the case here.

**12. Under what terms and conditions should SWBT be required to provide access to subloops as an alternative to line sharing over fiber-fed DLC architecture?**

***CLEC's Position***

AT&T argues that SWBT must provide access to subloops at any location where the loop switches from copper to fiber, regardless of whether such point is located at: (1) a remote terminal, (2) a feeder-distribution interface, (3) a neighborhood pole or pedestal, (4) a serving area interface ("SAI") point, (5) the minimum point of entry (for multiple dwelling units), (6)

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<sup>384</sup> SWBT Initial Brief at 66; Chapman Direct at 18.

any other point expressly specified by the FCC, such as the Network Interface Device, or (7) any other technically feasible point.<sup>385</sup>

IP and Sage commented that if this Commission determines the NGDLC loop is a UNE, the FCC requires SWBT to offer unbundled subloops wherever technically feasible.<sup>386</sup> In addition, IP and Sage argue that there is a rebuttable presumption of technical feasibility once a state has determined that it is technically feasible for any incumbent in any state to unbundle the loop at the same point.<sup>387</sup> IP/Sage maintain that SWBT bears the burden of demonstrating it is not technically feasible to do so.<sup>388</sup>

Rhythms argues that FCC has expressly required the unbundling of the high frequency portion of the copper subloop, the fiber subloop, and subloops in general. Under the *Line Sharing Order*, Rhythms asserts that the ILEC must unbundle copper subloops unless it can demonstrate to a state commission that unbundling is not technically feasible.<sup>389</sup> Rhythms argues that SWBT has failed entirely to sustain its burden to prove that either copper or fiber subloops cannot be unbundled.

Rhythms indicates that the *Line Sharing Order* specifically required ILECs to unbundle the subloop consisting of the high frequency portion of the copper loop for customers served by a line-shared loop.<sup>390</sup> In addition, Rhythms asserts that under the *Line Sharing Reconsideration Order*, the FCC clarified that subloops must be unbundled whether configured on all copper or fiber-fed DLC loops, and that such unbundling must occur at the remote terminal as well as the central office.<sup>391</sup> Rhythms believes that this requirement is in addition to the FCC's order requiring ILECs to unbundle UNE loops, whether all copper or a combination of copper and fiber, from the central office to the customer premises.<sup>392</sup> Furthermore, Rhythms believes that

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<sup>385</sup> AT&T Initial Brief at 36, citing *UNE Remand Order* ¶ 205-206.

<sup>386</sup> IP and Sage Initial Brief at 48, citing *UNE Remand Order* ¶ 206.

<sup>387</sup> *Id.*

<sup>388</sup> *Id.*

<sup>389</sup> Rhythms Initial Brief at 41, citing *Line Sharing Order* ¶ 92.

<sup>390</sup> Rhythms Initial Brief at 41-42, citing *Line Sharing Order* ¶¶ 91, 92.

<sup>391</sup> Rhythms Initial Brief at 41-42, citing *Line Sharing Reconsideration Order* ¶ 10.

<sup>392</sup> *Id.*

ILECs are obligated to provide unbundled access to subloops at any technically feasible point in the ILEC's outside plant.<sup>393</sup> Rhythms argues that such points may include the pole or pedestal, the network interface device, the minimum point of entry, the single point of interconnection, the main distribution frame, the remote terminal, and the feeder/distribution interface.<sup>394</sup> Rhythms believes that collocation of the NGDLC line cards is the key means of access to these subloops in the Pronto architecture.

WCOM believes that CLECs face "substantive differences" in the ability to collocate and access subloops at remote terminals. Specifically, WCOM argues that ASI has much more favorable access to subloops as part of Project Pronto than CLECs that try to collocate at the remote terminals. WCOM urges a finding that SWBT must provide CLECs reasonable and non-discriminatory access to subloops at remote terminals and urges the Arbitrators to adopt the FCC's definition for subloops.<sup>395</sup> WCOM argues that by literally hard wiring the subloops, SWBT designed the Project Pronto remote terminals in a manner that precluded any reasonable access to subloops by collocating CLECs.<sup>396</sup> WCOM believes that evidence supports the fact that CLECs could not access subloops at the remote terminal, absent another mechanism, because SWBT had purchased hard wired remote terminals for Project Pronto.<sup>397</sup> WCOM believes that SWBT could have designed the Project Pronto remote terminals in a forward looking and open manner that allowed for reasonable CLEC access to subloops.<sup>398</sup> Because SWBT did not design its RTs in the proper manner, WCOM argues that SWBT should be required to legally unbundle the subloop at the remote terminal, should retrofit the existing Project Pronto remote terminals to allow for access at the remote terminal (e.g., the ECS), and should price the access to the subloop applying forward-looking costing and pricing principles.<sup>399</sup>

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<sup>393</sup> Rhythms Initial Brief at 41-42, citing *UNE Remand Order* ¶ 206; 47 U.S.C. § 51.319(a)(2).

<sup>394</sup> Rhythms Initial Brief at 41-42, citing 47 U.S.C. § 51.319(a)(2).

<sup>395</sup> WCOM Initial Brief at 18.

<sup>396</sup> WCOM Ex. 2, Rebuttal Testimony of William Drake "Drake Rebuttal" at 5 (October 20, 2000); *see also* WCOM Demonstrative Ex. 1 (diagram of hard wired configuration).

<sup>397</sup> Tr. at 441.

<sup>398</sup> Tr. at 600-602.

<sup>399</sup> WCOM Initial Brief at 18.

Sprint did not present a position with respect to this issue.

### *SWBT's Position*

SWBT argues, in addition to the reasons set forth in DPL Issues above, that the Commission should not require line sharing over fiber-fed DLC because it is not necessary to allow CLECs to offer advanced services. SWBT indicated that CLECs will continue to have access to the all-copper loop and may offer advanced services over that loop. SWBT has agreed to construct an Engineering Controlled Splice (ECS) that will allow the CLEC to gain access between the customer premises and the remote terminal.<sup>400</sup> SWBT states that CLECs may request a special construction arrangement to construct an ECS near the remote terminal, affording them access to multiple Serving Area Interfaces (SAI) that subtend that RT.<sup>401</sup> Furthermore, SWBT argues that CLECs can use a pair at a time to provision service to end users or, at their option, they can dedicate a certain number of pairs to be used by them between the ECS and the feeder distribution interface (FDI).<sup>402</sup> SWBT indicates that regardless of whether Project Pronto has been deployed in a particular serving area, CLECs can access the HFPL UNE at the central office or at the SAI through an ECS.<sup>403</sup>

In addition, SWBT indicated that CLECs have several options with respect to providing xDSL services. SWBT asserts that CLECs can access all-copper loops by collocating in the central office, they can utilize SWBT's wholesale broadband service by collocating in the central office, or they can remotely locate their stand-alone DSLAMs and use an ECS.<sup>404</sup> Furthermore, SWBT has made numerous copper subloops available to CLECs at numerous points in the network.<sup>405</sup> SWBT believes that the Commission should continue to allow it to provide access to copper subloops at technically feasible points, rather than requiring fiber-fed NGDLC "line sharing."<sup>406</sup>

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<sup>400</sup> SWBT Ex. 19, Rebuttal Testimony of Mark Welch Rebuttal "Welch Rebuttal" at 9 (October 20, 2000).

<sup>401</sup> Welch Rebuttal at 8; Tr. at 440-441.

<sup>402</sup> Tr. at 10.

<sup>403</sup> Lube Rebuttal at 28; Welch Rebuttal at 4.

<sup>404</sup> Lube Rebuttal at 50.

<sup>405</sup> Welch Rebuttal at 5-6.

<sup>406</sup> SWBT Initial Brief at 85.

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*Arbitrators' Decision*

The Arbitrators agree with CLECs that SWBT is obligated to provide access to subloops at any technically feasible point. The FCC defines subloops as follows:

*Subloop.* The subloop network element is defined as any portion of the loop that is technically feasible to access at terminals in the incumbent LEC's outside plant, including inside wire. An accessible terminal is any point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. Such points may include, but are not limited to, the pole or pedestal, the network interface device, the minimum point of entry, the single point of interconnection, the main distribution frame, the remote terminal, and the feeder/distribution interface.<sup>407</sup>

In addition, this Commission in the xDSL Arbitration, concluded that where a competitor collocated its DSLAM at a remote terminal at the fiber/copper interface, SWBT is required to provide CLECs unbundled access to subloops to access the copper wire portion of the loop.<sup>408</sup> This issue is even more important in the context of Project Pronto, as the engineering design effectively denies CLECs access at the remote terminal. Without affirming CLECs' rights with respect to subloops, the Arbitrators would be allowing SWBT to avoid already established obligations. As indicated earlier, the Arbitrators do not believe that this mode of provisioning will be widespread based on the economic and technical realities that exist. However, the Arbitrators stress that this option should remain available in those situations where a CLEC determines it is appropriate.

Therefore, the Arbitrators affirm the Commission's and the FCC's earlier findings that SWBT must allow CLECs access to subloops at all technically feasible points. The FCC has determined that an accessible terminal may include, but is not limited to, remote terminals.<sup>409</sup> The Arbitrators are convinced by the evidence in this record that it is technically feasible to access the subloop at the remote terminal; however, Project Pronto is designed in such a way as to deny access that is technically feasible.<sup>410</sup> As SWBT has already deployed many of these

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<sup>407</sup> 47 CFR § 51.319(a)(2).

<sup>408</sup> *DSL Arbitration Award* at 30.

<sup>409</sup> See 47 CFR § 51.319(a)(2).

<sup>410</sup> Rhythms Ex. 13A

remote terminals, the Arbitrators agree with WCOM that the only solution to SWBT's hard-wiring of the backplane of the remote terminal may be the SWBT ECS. The Arbitrators are concerned, however, with the evidence in this record that clearly indicates the enormous expense required to remotely collocate because of the hard-wired remote terminal. In essence, the Arbitrators believe that SWBT's offer to provide an ECS arrangement amounts to the CLEC having to pay for access that already is required. As SWBT could have designed the architecture in an open manner that provided CLECs with access to subloops with no additional cost to the CLEC as required, the Arbitrators believe that pricing for the ECS should be based on a forward-looking, efficient network design. However, because the pricing issue has not been raised in this phase of the arbitration, the Arbitrators make no specific ruling on this issue at this time.<sup>411</sup>

SWBT has also indicated that CLECs may avail themselves of dark fiber at the remote terminal and, therefore, SWBT should not be responsible for carrying the CLECs traffic from the remote terminal to the central office.<sup>412</sup> However, dark fiber may not always be available, thus making it impossible for the CLEC to provision xDSL service with a remotely located DSLAM.<sup>413</sup> Therefore, the Arbitrators find that where a CLEC has collocated a DSLAM in SWBT's remote terminal, it is SWBT's burden to provide the fiber subloop back to the central office. If SWBT must increase the bandwidth capacity from the RT to the CO in order to provide CLECs access, then SWBT shall do so. Without such a ruling, SWBT could delay and/or halt a CLECs use of this method for provisioning service.

**13. What terms and conditions should apply to CLEC ownership of DLC line cards at ILEC remote terminals?**

***CLEC's Position***

Rhythms argues that terms and conditions for CLEC ownership of DLC line cards must be included in the Commissions decision. Without access to the line cards, Rhythms argues that

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<sup>411</sup> Tr. at 452 (SWBT agreed to address this issue in a final costing phase of this docket).

<sup>412</sup> Lube Direct at 25; Tr. at 491-492.

<sup>413</sup> Tr. at 503-509.

SWBT can effectively impede Rhythms access to line sharing.<sup>414</sup> Rhythms argues that because the DSLAM and splitter functionality are contained in the ADSL Digital Line Unit (ADLU) card that is inserted into the NGDLC equipment, CLECs must be able to collocate in order to gain access to the subloop UNEs contained in the "Pronto" architecture.<sup>415</sup> Rhythms asserts that it should be allowed to collocate line cards as "equipment necessary for interconnection or access to unbundled network elements" under 251(c)(6).<sup>416</sup> Rhythms indicates that without access to the line cards, CLECs would be forced to place electronics in the RTs, which are either not accessible practically because of size constraints or economically because of costs of serving customers off numerous SAIs.<sup>417</sup>

Second, Rhythms argues that forcing CLECs to use a central office based DSLAM rather than having access to the NGDLC functionality via line cards, treats CLECs disparately, as xDSL services are distance sensitive. Rhythms adds that CLECs have a vested economic interest in efficient deployment of line cards; therefore, SWBT's concerns regarding exhaust of resources is misplaced.<sup>418</sup> Additionally, Rhythms argues that SWBT's other concerns regarding administrative difficulties are unfounded.<sup>419</sup> IP and Sage support Rhythms position on this issue, as do WCOM and AT&T.

### ***SWBT's Position***

SWBT argues that providing CLECs with access to the line cards is fraught with problems and contrary to collocation requirements. SWBT argues that the ADLU line cards deployed in the "Pronto" architecture are not by themselves equipment, but rather one component of the NGDLC system and, thus, useless on their own.<sup>420</sup> SWBT believes that CLECs should not have access to line cards for several reasons. First, SWBT argues that a line card is not a piece of equipment and, therefore, does not qualify to be collocated under

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<sup>414</sup> Donovan Direct at 14.

<sup>415</sup> Rhythms Initial Brief at 43.

<sup>416</sup> *Id.*

<sup>417</sup> Donovan Direct at 14.

<sup>418</sup> Rhythms Initial Brief at 47.

<sup>419</sup> *Id.*

<sup>420</sup> Lube Direct at 24.

251(c)(6).<sup>421</sup> SWBT argues that the FCC's rules require collocation of complete items of equipment.<sup>422</sup> SWBT states that the ADLU line card currently deployed is merely a sub-component of an NGDLC, with no stand-alone functionality unless it is integrated with the additional hardware and software in the NGDLC system.<sup>423</sup>

Second, SWBT argues, line cards are not "necessary" to allow CLECs access to UNEs. SWBT indicates that the D.C. Circuit Court of Appeals recently clarified that this second condition, that the equipment being collocated must be "necessary" for interconnection or access to UNEs, must be met.<sup>424</sup> SWBT presented evidence that collocation of the line cards is not necessary for CLECs to interconnect or access UNEs and that placing the cards into SWBT's equipment does not provide access to UNEs or interconnection.<sup>425</sup> SWBT argues that there are no means by which to physically cross-connect the ADLU card to any UNE at the RT.<sup>426</sup> In addition, SWBT claims that the line card is not necessary to perform tasks of accessing UNEs.<sup>427</sup>

Third, SWBT indicates, allowing CLECs access to line cards causes operational problems, including premature exhaust of the NGDLCs and increased provisioning and maintenance processes that SWBT will be required to develop. SWBT believes that notwithstanding the legal prohibitions against collocating line cards, the Commission should decline to order such collocation for these operational concerns.<sup>428</sup> Because of the design of the cards, SWBT states that allowing CLECs' ownership will cause premature exhaust of the systems.<sup>429</sup> If the CLEC did not use all of the ports on the multi-port card, some portion of the line card would be underutilized. By disallowing collocation, SWBT argues that the Commission will preserve its ability to maximize utilization of all ports on every card.<sup>430</sup> Finally, SWBT argues that allowing CLEC ownership of individual cards causes maintenance

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<sup>421</sup> SWBT Initial Brief at 67-68.

<sup>422</sup> *Id.*

<sup>423</sup> Lube Direct at 24.

<sup>424</sup> SWBT Initial Brief at 70, citing *GTE Serv. Corp. v. FCC*, 205 F.3d at 422-23.

<sup>425</sup> Lube Direct at 21-26.

<sup>426</sup> *Id.* at 26.

<sup>427</sup> Lube Rebuttal at 32.

<sup>428</sup> Lube Direct at 25-26.

<sup>429</sup> *Id.* at 19; Tr. at 630.

<sup>430</sup> Lube Direct at 19-20.

and operational problems that do not exist in the currently deployed architecture.<sup>431</sup> Tracking and maintaining which CLEC has ownership of which slot would cause severe problems for SWBT and may cause SWBT to reevaluate its Pronto deployment.<sup>432</sup>

### *Arbitrators' Decision*

The Arbitrators are not persuaded at this time that CLECs are impaired without access to individual line cards. Although the Arbitrators have ruled that CLECs shall have access to the "Pronto" unbundled loop, the Arbitrators do not believe that collocation of line cards is necessary. Evidence in the record indicates that the line cards contain the electronics that generate and receive data transmissions carried from the end-user to the central office via a remote terminal and, thus, are in fact a substitute for the traditional DSLAM.<sup>433</sup> However, the Arbitrators are not convinced at this time that line cards are a "necessary" piece of equipment as argued by Rhythms.<sup>434</sup> The Arbitrators are somewhat compelled by the evidence that the ADLU card performs multiplexing and splitter functions that the system cannot otherwise provide; thus, the cards are necessary to gain "access" to UNEs. Nevertheless, the Arbitrators are not convinced at this time that collocation of line cards should be ordered.

The Arbitrators are concerned with problems associated with such a finding, including security concerns, inventory problems, and maintenance and repair coordination and responsibility. The Arbitrators are particularly concerned that allowing CLECs direct access to remote terminal cabinets causes unnecessary security and administrative concerns. There is not sufficient evidence in the record to alleviate those concerns. Because the Arbitrators are not convinced at this time that CLEC ownership of the line cards is "necessary" and is indeed problematic, the Arbitrators believe that the best solution is for SWBT to maintain the line cards. This alleviates the problems of security, maintenance, and inventory. In addition, the Arbitrators agree with SWBT that based upon the current technology, exhaust of functionality is a likely possibility with numerous owners of line cards. As the technology improves, however, it may be

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<sup>431</sup> *Id.* at 26-27.

<sup>432</sup> *Id.*

<sup>433</sup> Tr. at 586.

<sup>434</sup> Rhythms Initial Brief at 43.

appropriate to consider this issue at some later time. For instance, as line card density increases, it may be less likely that resources will be underutilized by several CLECs owning line cards. In addition, if a multi-flavor line card (e.g. one that will provide more than ADSL functionality) is developed, this may also lead to better utilization.

As indicated earlier, the Arbitrators acknowledge that in fiber-fed DLC architectures it is problematic in most cases, and impossible in some cases, for CLECs to place electronics in the RT due to space constraints. Indeed, the Arbitrators agree that SWBT should not be relieved of its legal requirements simply because it has engineered its network in a certain fashion. However, the Arbitrators believe that by ordering SWBT to provide access to Pronto as part of the loop, CLECs will have a meaningful opportunity to compete. As the evidence revealed, SWBT currently does not offer different flavors of xDSL for line sharing, but instead only supports line cards capable of provisioning ADSL service. The Arbitrators believe that SWBT should encourage its vendors in consultation with CLECs to develop line cards that support other xDSL services or that are universal in application. When new cards become available SWBT shall have the same obligations with respect to those applications and should be required to show the Commission why a certain technology is not technically feasible to provision.<sup>435</sup>

**14. Should SWBT be required to offer CLECs Permanent Virtual Paths (“PVPs”) and Permanent Virtual Circuits (“PVPs”) at all current ATM Quality of Service (“QoS”) classes on fiber-fed DLC loops?**

***CLEC’s Position***

Rhythms believes that SWBT should be required to offer all ATM Quality of Service classes (QoS) on fiber-fed DLC loops, including Permanent Virtual Paths and Permanent Virtual Circuits regardless of whether SWBT or its data affiliate use them; however, Unspecified Bit Rate (UBR) is the only QoS that SWBT currently provides over Pronto.<sup>436</sup> Rhythms believes that enabling CLECs to utilize QoS besides UBR, will allow them the ability to offer different speeds of xDSL and attempt to distinguish their service offerings. Rhythms argues that the

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<sup>435</sup> *Line Sharing Order* ¶¶ 195-211.

<sup>436</sup> Rhythms Ex. 17.

evidence in this record supports the fact that different ATM QoS classes will be available over Pronto in the near future.<sup>437</sup> In addition, Rhythms indicates that any concerns of SWBT related to premature exhaust of bandwidth capacity are greatly exaggerated and could be overcome through market mechanisms.<sup>438</sup>

WCOM stated its interest in obtaining capabilities to allow carriers to provision services that current Pronto offerings do not provide and suggested continued Commission oversight if SWBT is unwilling to explore different options.<sup>439</sup> AT&T indicated that the QoS classes are technically feasible in the ATM switch that SWBT is utilizing.<sup>440</sup> IP and Sage support the arguments of the other CLECs on this point.<sup>441</sup>

### ***SWBT's Position***

SWBT argues that the Pronto architecture does not currently support PVCs and PVPs at all classes of ATM QoS.<sup>442</sup> However, SWBT has voluntarily committed to work collaboratively with CLECs to introduce additional capabilities that may be provided over the Pronto architecture.<sup>443</sup> SWBT strongly opposes the Commission mandating additional QoS classes, because the affect of a CLEC purchasing dedicated bandwidth has not been determined regarding the capacity or operational feasibility of the NGDLC.<sup>444</sup> By mandating different QoS classes, SWBT warns that service degradation may result for other xDSL users served by NGDLC.<sup>445</sup> For those reasons, SWBT urges the Commission restraint in mandating additional classes at this time.

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<sup>437</sup> *Id.*

<sup>438</sup> Tr. at 635-636; 642.

<sup>439</sup> Drake Rebuttal at 3-4.

<sup>440</sup> AT&T Initial Brief at 36.

<sup>441</sup> IP and Sage Initial Brief at 51.

<sup>442</sup> Lube Direct at 29; Lube Rebuttal at 41.

<sup>443</sup> Lube Direct at 30.

<sup>444</sup> *Id.*

<sup>445</sup> *Id.*

*Arbitrators' Position*

Based on the finding that CLECs should be allowed access to entire loop, the Arbitrators are persuaded that SWBT should provide CLECs with options for different amounts of bandwidth. The Arbitrators believe that the evidence indicates that some QoS classes are currently available and additional QoS classes will become available in the near future to allow CLECs the opportunity to provide distinctive offerings, if they so choose. Although SWBT argues that the CLECs have not proven that different QoS classes will work over the Pronto architecture, the Arbitrators believe that SWBT is required to provide evidence that different QoS classes are not technically feasible.<sup>446</sup> If a CLEC wishes to provide a certain service, it is up to SWBT to prove that the service is incompatible with the current architecture. The Arbitrators agree that Texas consumers will benefit from increased xDSL speeds and variations in product offerings.

The Arbitrators remain mindful, however, of SWBT's concerns that additional testing is necessary to determine consequences of dedicated bandwidth that different QoS classes offer. Therefore, the Arbitrators do not order SWBT at this time to specifically offer a certain QoS, as capabilities are still being developed. SWBT shall continue its collaborative efforts with CLECs to ensure that additional capabilities that are technically feasible are introduced for the benefit of end-users. When a product becomes available and a CLEC wants to provide such service, SWBT shall have the burden to show, why from a technical feasibility standpoint, it cannot be provisioned at the CLECs request. The Arbitrators believe that the Commission is the appropriate forum to address additional concerns of the parties should they arise.

- 17. Should SWBT be required to cross-connect the Pronto offering to the MDF for the integrated voice/data offering? (IP, et al. Issue No. 19)**

*CLEC's Position*

AT&T believes that SWBT should be required to cross connect the Pronto offering to the MDF for the integrated voice/data offering because it is technically feasible to do so, as SWBT

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<sup>446</sup> See Line Sharing Order ¶ 195.

admitted in the hearing.<sup>447</sup> AT&T believes that based on prior decisions by the Commission, SWBT is required to take the voice portion of the service from the remote terminal and cross-connect this to the appropriate switch port.<sup>448</sup> AT&T asserts that SWBT should not be allowed to alter this requirement simply because the DLC is a Project Pronto DLC.<sup>449</sup>

WCOM argues that there is no technical reason for SWBT's collocation requirement.<sup>450</sup> It is technically feasible for SWBT to transport the voice and data through UNEs to the CLEC's designated location (including voice to SWBT's or a CLEC's switch).<sup>451</sup> In turn, the data would be transported to the Lucent ATM router (OCD) in SWBT's central office.<sup>452</sup> WCOM argues that SWBT's testimony and proposed language are outside of the scope of this proceeding and contrary to the *Line Splitting Award*, where the Arbitrators ruled that SWBT must allow line splitting and provide splitters to AT&T.<sup>453</sup> Finally, WCOM believes that it is clearly technically feasible for SWBT to provision a line splitting arrangement where SWBT provides the splitter.<sup>454</sup> Accordingly, SWBT's statement that it will not provide the splitter in a line splitting scenario<sup>455</sup> cannot be justified on technical feasibility grounds.<sup>456</sup>

IP argues that SWBT should be required to cross-connect the Pronto offering the switch port because it does this for its retail POTS service and it is, therefore, required to do the same

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<sup>447</sup> Tr. at 466-473; see also Tr. at 625-628.

<sup>448</sup> Turner Direct at 35. (The Commission previously determined that CLECs have the right to access the voice capability through a remote DLC and that a loop-switch port combination would remain on its existing DLC assets but be priced as a regular 2-wire analog loop terminating on the appropriate switch port.)

<sup>449</sup> *Id.*

<sup>450</sup> Drake Rebuttal at 4. SWBT's witness Mr. Lube confirmed this conclusion on cross-examination. Tr. at 466-473 (includes following statement at 469: "I know of no reason why the voice has to go to the collo"). Indeed, Mr. Lube's testimony made it clear that any decision by SWBT to require collocation would be solely based on unspecified policy grounds. Tr. at 466-473, 661-664, 666-668 (includes following statement at 668: "I just see no network technical reason why we can't do that.").

<sup>451</sup> Drake Rebuttal at 4.

<sup>452</sup> *Id.*

<sup>453</sup> WCOM Initial Brief at 22.

<sup>454</sup> Drake Rebuttal at 4.

<sup>455</sup> Schlackman Direct at 23.

<sup>456</sup> Drake Rebuttal at 4.

for CLECs.<sup>457</sup> IP indicates that CLECs are simply seeking the ability to order a cross-connect to most efficiently terminate the voice frequencies to an unbundled switch port.<sup>458</sup>

### ***SWBT's Position***

SWBT argues that it should not have to cross-connect the voice portion of the combined voice and data Broadband Services offering at the MDF to an unbundled switch port on the CLECs' behalf. Rather, SWBT argues that CLECs should combine this service with an unbundled switch port in its collocation space, consistent with CLECs' combining of network elements in its collocation space.<sup>459</sup> SWBT believes that the CLECs have not provided the Commission with any legitimate reason why SWBT should be required to combine services (xDSL over Pronto) with UNEs (the unbundled switch port); thus, the Commission should not mandate cross-connection of Project Pronto to the MDF.<sup>460</sup> On reply, SWBT indicated that it could not be forced to cross-connect the voice portion of the combined voice and data Broadband Services, as SWBT is not obligated to combine a new "Project Pronto UNE" with the existing "UNE switching" for CLECs.<sup>461</sup> SWBT argues that the CLECs' request is unlawful and must be rejected.

### ***Arbitrators' Decision***

The Arbitrators agree with the CLECs that the testimony elicited at the hearing clearly demonstrates that it is technically feasible to cross-connect the voice portion of the combined voice and data Broadband Services offering at the MDF to an unbundled switch port purchased by a CLEC.<sup>462</sup> The Arbitrators agree with AT&T's witness Mr. Turner, that based on prior Commission precedent, SWBT is required to take the voice portion of the service from the

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<sup>457</sup> Gentry Direct at 48.

<sup>458</sup> *Id.*

<sup>459</sup> SWBT Initial Brief at 81.

<sup>460</sup> *Id.*

<sup>461</sup> SWBT Reply Brief at 55. (The plain language of Section 251(c)(3) of the Act prohibits any requirement that incumbent LECs combine UNEs for CLECs.) *IUB III*, 219 F.3d at 758-59; *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8<sup>th</sup> Cir. 1997) (subsequent history omitted) ("*IUB I*"). This finding by the Eighth Circuit, acting in its role as a Hobbs Act reviewing court under 28 U.S.C. § 2342(1), cannot be collaterally attacked in any other forum (*see, e.g., FCC v. ITT World Comm., Inc.*, 466 U.S. 463, 468 (1984)) and is binding on state commissions. *Verizon North, Inc. v. Strand*, File No. 5:98-CV-38, slip op. at 13-14 (W.D. Mich., Dec. 5, 2000).

remote terminal and cross-connect this to the appropriate switch port.<sup>463</sup> The Arbitrators have found that the transmission facility used in Project Pronto is included within the definition of the loop unbundled network element. The Arbitrators find that SWBT should not be allowed to alter this requirement simply because the DLC in this situation is a Project Pronto DLC. Accordingly, the Arbitrators do not need to address the “combination” issue asserted by SWBT.<sup>464</sup>

**18. Should the HFPL Appendix include requirements that:**

**18(a). The ILECs are required to provide amendments to this Appendix to incorporate any additional obligations required by the FCC?**

***CLECs' Position***

IP argues that without specific findings in the Award, IP will be unable to obtain additional ILEC obligations afforded by the FCC or this Commission.<sup>465</sup> No other party took a position with respect to this issue.

***SWBT's Position***

SWBT argues that to the extent that CLECs seek to modify approved contracts such modifications may only be made through negotiation, and if necessary, the arbitration and dispute resolution process as prescribed by this Commission's Procedural Rules.<sup>466</sup>

***Arbitrators' Decision***

Generally speaking, SWBT is required to abide by FCC or Commission requirements. However, the Arbitrators agree with SWBT that in order to modify existing interconnection agreements, the parties should negotiate additional language comporting with subsequent

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<sup>462</sup> Tr. at 466-473.

<sup>463</sup> Turner Direct at 35.

<sup>464</sup> The Arbitrators denied AT&T's and WorldCom's Motion to Strike a portion of SWBT's brief asserting the issue of “new combinations.” However, in the interest of compiling a full and complete record, the Arbitrators allowed AT&T's and WorldCom's response and SWBT's reply into the record and thoroughly reviewed and considered all of the arguments presented. See Order No. 25.

<sup>465</sup> IP and Sage Initial Brief at 53-54.

regulatory requirements. Should the parties be unable to come to agreement over additional obligations, a petition for arbitration or post-interconnection dispute resolution would be appropriate.

**18(b). Dispute resolution under this Appendix may be filed with the PUC?**

***CLEC's Position***

IP indicated that it is willing to accept current dispute resolution language contained in its Interconnection Agreement as long as SWBT agrees that the dispute resolution provisions contained in the General Terms and Conditions would apply to the HFPL Appendix and any separate appendix created for "Pronto."<sup>467</sup> AT&T indicated that the General Terms and Conditions should apply so that no confusion exists as to what provisions governed various disputes.<sup>468</sup> No other party took a position with the issue.

***SWBT's Position***

SWBT indicated that dispute resolution under the General Terms and Conditions should apply and that adding additional dispute resolution terms and conditions to the HFPL appendix could be confusing.<sup>469</sup>

***Arbitrators' Decision***

The Arbitrators believe that this issue is no longer in dispute based on the parties' filings and that the underlying Terms and Conditions dispute resolution provisions would apply to carrier disputes.

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<sup>466</sup> SWBT Initial Brief at 138.

<sup>467</sup> IP and Sage Initial Brief at 37.

<sup>468</sup> AT&T Initial Brief at 37.

<sup>469</sup> SWBT Initial Brief at 138; Chapman Direct at 7.

**18(c). A provision that SWBT (or an ILEC with a comparable offering) will offer Pronto indefinitely, even after the expiration of the HFPL Appendix? (IP, et al. Issue No. 20)**

***CLEC's Position***

IP believes that it is imperative that this Commission order SWBT to offer Pronto indefinitely, even after the expiration of the HFPL Appendix.<sup>470</sup> Because SWBT could cease offering Pronto and thereby halt competitive alternatives, IP believes that this is the only way to ensure competition will continue.<sup>471</sup> No other CLEC presented evidence on this issue.

***SWBT's Position***

SWBT argues that the HFPL Appendix should be for a term of years consistent with the underlying contract. SWBT argues that this is axiomatic with the way that interconnection agreements are handled.

***Arbitrators' Decision***

The Arbitrators agree with SWBT that the HFPL Appendix should not be treated uniquely with respect to the length of the contract that underlies the Appendix. Any continued concern regarding the availability of Pronto should be addressed by the unbundling obligations ordered in this Award. Therefore, the Arbitrators do not impose different obligations for the length of the HFPL Appendix.

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<sup>470</sup> Gentry Direct at 6.

<sup>471</sup> *Id.*

**19. Should SWBT (or an ILEC with a comparable offering) be required to offer DS1s for the Pronto offering? (IP, et al. Issue No. 21)**

***CLEC's Position***

IP and Sage argue that SWBT must allow CLECs to purchase a DS1 from the RT to the CO rather than a DS3 or OC3 that SWBT currently provides. IP and Sage argue that in order to serve residential customers, small carriers cannot justify purchasing entire OC3 bandwidth, as it is not economical.<sup>472</sup> IP and Sage believe that CLECs who are targeting Tier 2 or 3 cities or predominantly rural areas cannot justify the costs associated with a DS3, particularly given the smaller demand in those areas.<sup>473</sup> In most rural areas, IP indicates that a DS3 will not be economical unless the CLEC has a level of traffic greater than two DS1s.<sup>474</sup> IP and Sage recommend ordering SWBT to charge for DS3 capability at the DS1 rate until such time as SWBT provides DS1 functionality.<sup>475</sup> AT&T agrees that it is currently not always economical to order DS3s and that it is technically feasible for SWBT to offer DS1 functionality rather than DS3.<sup>476</sup>

***SWBT's Position***

SWBT argues that currently the system that it has deployed will only handle DS3 or OC3 termination points.<sup>477</sup> In addition, SWBT claims that notwithstanding the technical constraints, the DS1 is priced at 65% of the DS3 and therefore makes no economic sense.<sup>478</sup> Finally, SWBT asserts that forcing it to allow DS1 offerings will cause exhaust of the ports on the optical concentration device (OCD) in the central office.<sup>479</sup> SWBT claims that ports are limited and once a CLEC chooses a DS1, there is no cost-effective process for migrating in-service xDSL consumers from the lower speed OCD port to the higher speed OCD port.<sup>480</sup>

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<sup>472</sup> Tr. 671-676.

<sup>473</sup> *Id.*

<sup>474</sup> Gentry Direct at 44.

<sup>475</sup> IP and Sage Initial Brief at 55.

<sup>476</sup> AT&T Initial Brief at 37; Tr. at 671-673.

<sup>477</sup> Lube Direct 17-18.

<sup>478</sup> *Id.*

<sup>479</sup> *Id.*

<sup>480</sup> *Id.*

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*Arbitrators' Decision*

The Arbitrators are convinced that without access to DS1 levels that CLECs would be effectively prohibited from offering xDSL service in many circumstances. The evidence shows that incrementally speaking, a DS1 costs 65% of a DS3.<sup>481</sup> However, the Arbitrators believe that notwithstanding economic efficiency concerns argued by SWBT, simply put, CLECs who serve few customers in remote areas will not need the additional bandwidth until take rates are sufficient to justify such bandwidth levels.<sup>482</sup> In fact, because of the number of remote terminals per central office and the number of potential customers served by each RT, it may never be economical to purchase service at DS3 levels.<sup>483</sup> The Arbitrators believe that SWBT's policy creates a barrier to entry in some of the most important circumstances, deployment of advanced services to rural Texas. The Arbitrators are convinced that SWBT can overcome any technical issues with respect to port capacity on the OCD. Although this may take time, the Arbitrators are persuaded by the fact that SWBT has indicated that a DS1 OCD port is technically available, but merely impracticable.<sup>484</sup> Therefore, the Arbitrators find that it is technically feasible for SWBT to also provide DS1s.

SWBT shall offer DS1 levels and shall do so in a rapid manner. While the Arbitrators could have required SWBT to cease deploying DS3 capability until such time as DS1 levels are available, the Arbitrators recognize the punitive nature of such a finding. The Arbitrators believe that a more reasonable approach, but one that incents compliance, is appropriate. Therefore, the Arbitrators believe that until such time as SWBT provides CLECs with the ability to order DS1 functionality, SWBT shall provide CLECs with current capabilities (DS3 or OC3), but shall charge no more than the price for a DS1. The Arbitrators believe that this will incent SWBT to develop this capability as soon as possible. When DS1 functionality is made available, CLECs are required to either move off of the higher bandwidth facility or continue with the DS3 level and pay the appropriate charge. The Arbitrators believe that a reasonable timeframe for CLECs

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<sup>481</sup> *Id.*

<sup>482</sup> Tr. at 671-676.

<sup>483</sup> *Id.*

<sup>484</sup> Lube Direct at 17.

to transfer service is five business days from when SWBT notifies the CLEC that DS1 functionality is available.

## VIII. PRE-ORDERING/ORDERING/PROVISIONING ISSUES

### DPL ISSUES 15, 20-36, 42

#### 20. What loop make-up information should be provided by an ILEC's loop qualification tool(s) for Line sharing UNE orders?

##### *CLEC's Position*

IP and Rhythms argue that SWBT should provide all loop make-up information, including all information on all loops that can be used to serve the customer's location.<sup>485</sup> Rhythms argues that the ILEC is obligated to provide all loop information contained in its OSS databases, back-end systems and records that is available to any SBC employee; this information includes but is not limited to the information SBC promised during the POR collaboratives, a list of approximately 30 data elements:<sup>486</sup>

Rhythms states that SWBT is currently providing incomplete loop information.<sup>487</sup> Rhythms states that the 45 loop elements that SWBT has agreed to provide falls far short of meeting SWBT's obligations under the FCC's Line Sharing Order, the FCC's UNE Remand Order, and the FTA.<sup>488</sup> Rhythms argues that SWBT should be obligated to provide all loop qualification information, not just 45 elements, under these obligations.<sup>489</sup> Furthermore, Rhythms states that the list of data elements SWBT offered in direct testimony is not the entire

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<sup>485</sup> IP Ex. 2, Rebuttal Testimony of Jo Gentry "Gentry Rebuttal" at 10-11 (October 20, 2000); Rhythms Ex. 6, Direct Testimony of Joseph Ayala "Ayala Direct" at 13-15. (October 9, 2000)

<sup>486</sup> The elements are: Loop length; Loop length by segment; Loop length by gauge; 26-gauge equivalent loop length (calculated); presence of load coils; quantity of load coils; presence of bridged taps; length of bridged taps; presence of pair gain/DLC; qualification status of the loop based on specified PSD; presence/location of repeaters; quantity of repeaters; type of repeaters; type of plant; composition of loop; portion of loop of each composition type; availability of spare loops; quantity of bridged taps; number of occurrences of bridged taps; quantity of low pass filters; quantity of range extenders; location of range extenders; number of gauge changes; location of pair gain; location of DLC; quantity of DLC; presence of remote switching unit; type of remote switching unit; type of repeaters; wire center; taper code.

<sup>487</sup> Ayala Direct at 13-15.

<sup>488</sup> *Id.*

list that SWBT agreed to provide during the POR collaboratives.<sup>490</sup> For instance, Rhythms is concerned that this policy precludes CLEC access to loop information for alternate loops capable of serving a given address, even though the availability of spare available loops is a required component of loop qualification information.<sup>491</sup> Sprint, AT&T, and WCOM have no comment on this question.

SWBT indicates that SBC has agreed in the POR collaboratives to provide the following data elements relating to SBC's Project Pronto:

1. Whether the loop originates at an ADSL capable RT
2. Whether the loop originates at a non-ADSL capable RT
3. Indicator of whether ADSL capable RT is available
4. Target date of when ADSL capable RT will be deployed
5. Location of ADSL capable RT by address
6. Location of ADSL capable RT by CLLI
7. Location of non-ADSL capable RT by address
8. Location of non-ADSL capable RT by CLLI

SWBT argues that it has agreed in the Advanced Services OSS POR to provide 45 data elements relating to provisioning of line-shared loops.<sup>492</sup> SWBT argues that these 45 elements are sufficient, SWBT will provide all elements to the extent that they are available, and SWBT does not need to provide any additional information.<sup>493</sup> SWBT argues that these 45 elements satisfy its requirements under the FCC orders.<sup>494</sup> SWBT points out that the CLECs have not identified any additional loop information that is necessary to them to implement line sharing. In addition, SWBT believes that this Commission has already made findings regarding the

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<sup>489</sup> *Id.*

<sup>490</sup> This list omits the following data elements relating to all-copper loops: 1) type of repeaters, 2) wire center, 3) taper code.

<sup>491</sup> Ayala Direct at 13-15.

<sup>492</sup> SWBT Ex. 8, Direct Testimony of Robin Jacobson "Jacobson Direct" at 5-6 (September 5, 2000).

<sup>493</sup> *Id.*

appropriate parameters of loop make-up information in the xDSL Arbitration. SWBT indicated that there are no differences between loop make-up information regarding stand-alone loops and line-shared loops. SWBT therefore believes that the CLECs are attempting another bite at the apple.

### ***Arbitrators' Decision***

Under the *UNE Remand Order*, SWBT is required to give CLECs access to all loop provisioning information contained in any of SWBT's backend systems, databases or records that may be accessed by any SWBT employee.<sup>495</sup> The relevant inquiry is not "whether the retail arm of the incumbent has access to the underlying loop qualification information, but rather whether such information exists anywhere within the incumbent's back office and can be accessed by any of the incumbent LEC's personnel."<sup>496</sup> The Arbitrators believe that any limit of access to information is a great detriment to competition; as much of the information contained by ILEC systems is critical to the ability of other carriers to compete with ILECs.<sup>497</sup> Therefore, by limiting CLECs to only a set list of data, SWBT may be improperly limiting CLECs' ability to access all loop provisioning information to which they are entitled. Although the list of elements that SWBT currently provides is helpful, it is not necessarily comprehensive. Our review of the provided elements, however, does not relieve SWBT from its obligation to provide all information to the CLECs. The Arbitrators cannot make a determination on this record as to whether SWBT is indeed providing CLECs with the required information, as that would entail a detailed audit of SWBT's backend systems and databases. SWBT has agreed to an audit of its backend systems in principle, as discussed in DPL No. 24. The results of such audit should reveal whether SWBT is improperly excluding information from CLECs.

- 22. Should SWBT be required to provide CLECs information on whether (a) a spare copper pair running from the demarcation point at the end-user premises to the**

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<sup>494</sup> *Id.*

<sup>495</sup> *UNE Remand Order* ¶ 430.

<sup>496</sup> *Id.*

<sup>497</sup> *First Report and Order* ¶ 518.

serving wire center is available or (b) a spare copper feeder subloop running from the feeder/distribution interface to the serving wire center is available?

### *CLEC's Position*

Rhythms indicates that SWBT should provide CLECs with information on spare facilities serving a customer's premises so that the same type of line and station transfer it gives its own xDSL affiliate can be performed for CLECs.<sup>498</sup> IP and Sage support Rhythms position on this issue, consistent with DPL Issue No. 20, wherein SWBT must provide all information on all loops that can be used to serve a customer's premises.<sup>499</sup> IP and Sage indicate it is inappropriate for CLECs to only receive a subset of all loops served at a location.<sup>500</sup>

### *SWBT's Position*

SWBT argues that because it has agreed to an audit of SWBT's systems and processes, any continuing concerns from CLECs that they are not receiving all of the information that are entitled, should be addressed in the audit and not in this arbitration.<sup>501</sup> SWBT indicated that information about both the copper plant and the Pronto facility is available to CLECs on request.<sup>502</sup> With regard to whether SWBT will provide loop qualifications for more than one line attached to a customer's premise, SWBT witness, Betty Schlackman, made clear that the loop qualification information would not differ as to the different copper lines attached to a customer premise because all such lines are going to be in the same binder-group and be served out of the same terminal.<sup>503</sup> As a result, these copper lines will be conditioned in the same manner, if at all. SWBT believes that there is no reason to provide additional reports about identical twisted pairs that are connected to an end user and possess identical characteristics.<sup>504</sup>

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<sup>498</sup> Ayala Direct at 13-15.

<sup>499</sup> IP and Sage Initial Brief at 56.

<sup>500</sup> Gentry Rebuttal at 10.

<sup>501</sup> SWBT Ex. 9, Rebuttal Testimony of Robin Jacobson "Jacobson Rebuttal" at 12-13 (October 20).

<sup>502</sup> Tr. at 913. See also Tr. at 904.

<sup>503</sup> Tr. at 895.

<sup>504</sup> *Id.*

*Arbitrators' Decision*

The Arbitrators disagree that SWBT's current inventory process is adequate. SWBT indicated that its systems currently provide information on whether Pronto facilities are available and whether a xDSL capable loop (copper) is available.<sup>505</sup> However, the CLECs are not provided information regarding all loops that can serve the end-user. SWBT's process of only providing CLECs with limited information is based on its assessment that there is no reason to provide additional reports regarding other twisted pairs that are connected to an end user.<sup>506</sup> However, CLECs are entitled to all information available in SWBT's backend systems, not a subset of that information that SWBT chooses to provide.<sup>507</sup> The Arbitrators cannot allow SWBT to filter information because it believes that information is not useful. Therefore, SWBT shall provide CLECs with access to information regarding all loops that serve a particular end-user. The Arbitrators require SWBT to submit an implementation plan to successfully implement this requirement with its proposed contract language that comports with this Award.

**23. What is the appropriate interval for providing loop qualification information to CLECs?**

*CLECs' Position*

Rhythms argues that SWBT should provide loop qualification information to CLECs in real time.<sup>508</sup> Rhythms indicates that the Commission has already determined that SWBT should make loop make up information available directly to CLECs in electronic format; thus, ordering SWBT to develop enhancements that allow real-time electronic access to loop qualification information.<sup>509</sup> IP and Sage support Rhythms' position on this issue.<sup>510</sup>

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<sup>505</sup> Tr. at 913.

<sup>506</sup> Tr. at 895.

<sup>507</sup> *UNE Remand Order* ¶ 427.

<sup>508</sup> Murray Direct at 80-81.

<sup>509</sup> *Id.*

<sup>510</sup> IP and Sage Initial Brief at 56.

*SWBT's Position*

SWBT argues that the Commission has already ruled on this issue in the context of the xDSL Arbitration and that the CLECs are simply trying to obtain a second bite at the apple.<sup>511</sup> SWBT believes that the process involved in providing loop qualification information related to line sharing is identical to that as related to stand-alone xDSL loops.<sup>512</sup> SWBT believes that there may be operational issues associated with the loop make up information, but no additional legal requirements should be placed on this process.<sup>513</sup>

*Arbitrators' Decision*

In the xDSL Arbitration, the Commission ordered SWBT to develop and deploy enhancements to its existing Datagate and EDI interfaces to allow real-time electronic access as a preordering function to the loop makeup information.<sup>514</sup> Specifically, the Commission determined that SWBT's pre-qualification and loop qualification systems were not a reasonable substitute for pre-order access to actual loop makeup information and therefore, ordered SWBT to provide actual, real-time loop makeup information to CLECs.<sup>515</sup>

Additionally, the FCC directed such an approach in the *UNE Remand Order*, concluding that:

Access to loop qualification information must be provided to competitors within the same time intervals it is provided to the incumbent LEC's retail operations. To the extent such information is not normally provided to the incumbent LEC's retail personnel, but can be obtained by contacting incumbent back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information. It would be unreasonable, for instance, if the requesting carrier had to wait several days to receive such information from the incumbent, if the incumbent's personnel have the ability to obtain such information in several hours. In order to provide local exchange and exchange access service, a competitor needs such information

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<sup>511</sup> Chapman Direct at 8.

<sup>512</sup> *Id.*

<sup>513</sup> *Id.*

<sup>514</sup> *DSL Arbitration Award* at 62.

<sup>515</sup> *Id.*

quickly to be able to determine whether a particular loop will support xDSL service.<sup>516</sup>

The Arbitrators are not convinced that the loop qualification process for line sharing is any different than for stand-alone loops, nor should it be provided in a different manner. The Arbitrators find nothing in the record to indicate that line sharing creates a unique situation in terms of loop qualification.<sup>517</sup> The Arbitrators agree with SWBT that this Commission has already ordered SWBT to provide real-time access to all loop qualification information that SWBT possesses.<sup>518</sup> Therefore, the Arbitrators find that SWBT must continue to provide loop qualification in the same manner that this Commission ordered in the xDSL Arbitration, that is, real time access to all loop qualification information contained in SWBT's databases or backend systems. Any outstanding concerns of CLECs regarding SWBT's failure to properly provide the required information should be addressed in the audit, as described in DPL Issue No. 24.

**24. Should SWBT be required to allow CLECs to audit their backend systems, databases and records to determine what loop provisioning and loop plant information is available to SWBT?**

***CLECs' Positions***

Rhythms believes that SWBT should be required to allow CLECs to audit their backend systems.<sup>519</sup> Rhythms asserts that CLECs are entitled to all information about the loop or loop plant that is useful for provisioning xDSL services and that is available to any SWBT employee.<sup>520</sup> However, Rhythms points out that CLECs do not know precisely how much of this information exists or where it is contained in SWBT's records, backend systems and databases.<sup>521</sup> While SWBT has agreed to provide 45 data fields from all of its OSS backend systems and databases, Rhythms points out that just one of SWBT's OSS -- LFACS -- has more

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<sup>516</sup> *UNE Remand Order* ¶ 431.

<sup>517</sup> Tr. at 866-876.

<sup>518</sup> In addition, the Commission has established a metric for SWBT to provide actual loop makeup information through a manual process, within 3 business days when the information is not contained in SWBT's databases. If SWBT can provide its retail ADSL personnel with actual loop makeup information in a shorter time frame, then the interval for CLECs should be parity with that timeframe.

<sup>519</sup> Ayala Direct at 22.

<sup>520</sup> *UNE Remand Order* ¶ 426.

than 100 data fields.<sup>522</sup> Thus, Rhythms believes the Commission should order SWBT to allow CLECs to audit on an ongoing basis the company's records, backend systems and databases in Texas, including but not limited to: LFACS, FACS, TIRKS, LEAD/LEIS, ASON, ACIS, SWITCH, WFA/C, WFA/DO, SOAC, LMOS, MARCH, Premis, LASR, FOMS/FUSA, and ARES.<sup>523</sup> IP and Sage support Rhythms' position on this issue.

### ***SWBT's Position***

SWBT indicated that it has already agreed in principal to an audit so that CLECs will be able to verify that SWBT is indeed providing them with all appropriate information.<sup>524</sup> SWBT stated that the following language was added to the Plan of Record POR, which should alleviate any questions:

To ensure CLECs that SBC's EDI and DataGate pre-order functions have access to and return all information related to loop make-up information that is contained in SBC's systems and databases, SBC will allow CLECs to review/audit SBC's systems and processes to establish the fact that SBC has made all data fully available.<sup>525</sup>

### ***Arbitrators' Decision***

Because SWBT has agreed to an audit in principal, the Arbitrators believe that this issue is generally resolved. The Arbitrators do not agree with SWBT however that a region-wide audit as part of the POR will be sufficient to ensure that CLECs in Texas are receiving the appropriate information. To the extent any systems and/or databases are unique to Texas, SWBT is ordered to allow CLECs to include such systems in the audit. Anything less would not be a proper barometer of what information is available to CLECs in Texas. It will be up to SWBT to show how certain systems/and or databases are or are not similar to the ones on a region-wide basis. The Arbitrators agree with Rhythms that minimally SWBT shall allow CLECs to audit the company's records, backend systems and databases in Texas, including but not limited to:

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<sup>521</sup> Ayala Direct at 22.

<sup>522</sup> Tr. at 813.

<sup>523</sup> Ayala Direct at 23.

<sup>524</sup> Jacobson Direct at 11.

<sup>525</sup> *Id.*

LFACS, FACS, TIRKS, LEAD/LEIS, ASON, ACIS, SWITCH, WFA/C, WFA/DO, SOAC, LMOS, MARCH, Premis, LASR, FOMS/FUSA, and ARES. The Arbitrators believe that allowing CLECs to audit SWBT's backend systems will provide CLECs assurances that SWBT is indeed providing the required information.

**25. Should SWBT be required to update its databases permanently with loop provisioning information compiled during a manual loop qualification request?**

***CLECs' Positions***

Rhythms argues that SWBT should be required to update its databases permanently when it performs a manual loop qualification on behalf of the CLEC. Rhythms cites the FCC's directive in UNE Remand Order, "that incumbent LECs will be updating their electronic database for their own xDSL deployment and to the extent their employees have access to the information in an electronic format, that same format should be made available to new entrants."<sup>526</sup> Rhythms is concerned that SWBT may not permanently update its records, as SWBT utilizes a temporary storage database for a period of 90 days.<sup>527</sup> Rhythms believes that the Commission should order SWBT to permanently update its records and specify terms and conditions to avoid confusion on this issue.<sup>528</sup> IP and Sage support Rhythms' position on this issue. IP also alleges that SWBT is not permanently updating databases with information gained as a result of manual loop qualification requests as SWBT had pledged. IP argues that this information is "dropping off" SWBT's databases 90 days after it is entered.<sup>529</sup>

***SWBT's Position***

SWBT has committed to updating its records in LFACS database for any manual loop qualification that performs for CLECs.<sup>530</sup> SWBT indicated that a temporary database was used

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<sup>526</sup> Rhythms Initial Brief at 91, citing *UNE Remand Order* ¶ 429.

<sup>527</sup> Ayala Direct, Att. C.

<sup>528</sup> *Id.*

<sup>529</sup> Tr. at 931-932.

<sup>530</sup> Tr. 823-824.

to update the information, but that this database was used in parallel with the permanent storage vehicle, LFACS.<sup>531</sup> Therefore, SWBT states that it is in compliance with this requirement.

SWBT also contends that it has taken all data returned as part of manual loop qualification requests and entered it into SWBT's databases, so that it may be accessed electronically if requested again. Information obtained to satisfy CLEC manual loop qualification requests is updated in SWBT's databases within four days, at which point it is available not only to the requesting CLEC, but to any CLEC who is requesting this information.<sup>532</sup> These updates are limited to loop qualification data where fields exists in a database to enter it; in some cases, fields in databases may not yet be available to record the data.<sup>533</sup>

### ***Arbitrators' Decision***

The Arbitrators agree with CLECs that SWBT has an obligation to update its databases with any new information that it receives when doing a manual loop qualification. It is clear that the FCC intended incumbent carriers to update loop qualification data as it becomes available, if the ILEC would have access to such information.<sup>534</sup> SWBT's witness Ms. Jacobson stated on the record that a temporary database is used in conjunction with LFACS, but that the information entered into the temporary database is done in parallel with LFACS.<sup>535</sup> Ms. Jacobson confirmed that SWBT was committed to updating manual loop qualification information permanently.<sup>536</sup> As this appears to be SWBT's current practice, the Arbitrators are satisfied that this obligation is being met. To the extent SWBT is currently not performing this practice, the Arbitrators order SWBT to do so immediately.

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<sup>531</sup> *Id.*

<sup>532</sup> Tr. at 929-930.

<sup>533</sup> Tr. at 928.

<sup>534</sup> *UNE Remand Order* ¶ 429.

<sup>535</sup> Tr. at 823-824.

<sup>536</sup> *Id.*

26. Should SWBT be required to enhance its databases to provide 100% actual (rather than designed) loop provisioning data?

*CLECs' Positions*

Rhythms believes that SWBT should be required to update its database to provide 100% actual loop provisioning data within a date certain. Rhythms believes that this request is reasonable since SWBT has approximately 20% to 30% of actual data on loops while SBC-Ameritech has 80% actual data on loops.<sup>537</sup> Rhythms indicates that SWBT in the POR collaboratives revealed that a loop inventory system known as ARES was utilized in the Ameritech region to achieve a higher rate of actual loop data.<sup>538</sup> Therefore, Rhythms believes that this system should be implemented in Texas to bring SWBT's actual data up to 100% as quickly as possible. Further, Rhythms believes that the Commission should specify the terms and conditions for SWBT's updates. Rhythms points out that Ameritech-Illinois has updated its OSS with actual loop provisioning information for free.<sup>539</sup> IP and Sage support Rhythms on this issue.

*SWBT's Position*

SWBT argues that it does not have a legal requirement to update all of its loop data into its databases. SWBT asserts that all CLECs, including ASI, are similarly positioned; access to actual data is limited and where actual data is unavailable, design data is provided. SWBT has also committed under the POR to update all actual data permanently on a 13-State basis. SWBT estimates that it will take this amount of time to efficiently upload all of outstanding loop plant. SWBT does not agree that it should inventory LFACS at the same time it is committing resources for updating, on a region wide basis, all actual data.

*Arbitrators' Decision*

The Arbitrators believe that SWBT should continue to update its databases as it performs manual loop qualifications as indicated above. In addition, the Arbitrators believe that SWBT's

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<sup>537</sup> Tr. at 828.

<sup>538</sup> Ayala Direct at 11.

commitment to inventory loop make-up information on a region-wide basis through the POR will enable CLECs and ASI to receive equal information to database information. The Arbitrators agree with SWBT that its data affiliate has the same access as any other CLEC. Indeed, this Commission ruled that SWBT did not have to catalogue actual loop make-up information through automated systems when it has no such information available to itself.<sup>540</sup> As the Commission has already ruled on this issue, the Arbitrators do not find that SWBT must update or catalogue all of its databases to provide 100% actual loop provisioning data, with the exception for maintaining manual look-up information, as discussed above.

The Arbitrators note that the Commission initially set up the pricing mechanism for a manual loop qualification at such a level for an interim period to incent SWBT to improve database accuracy and to rapidly mechanize all records.<sup>541</sup> As the actual loop make-up information in SWBT's database has not substantially increased from the time the Commission originally ruled on this issue, the Arbitrators believe that the current pricing scheme should continue. If the Commission's earlier rationale for the interim pricing is to have any effect, it should remain in place until SWBT shows that it is actively working to improve its actual records. Any true-up should be based on a forward-looking mechanized loop qualification process. However, as final rates for manual loop qualification are not being addressed in this phase, it is premature for the Arbitrators to set pricing on that element at this time.

**27. Should SWBT be required to update its databases with loop provisioning information regarding new network architectures as they are deployed?**

***CLECs' Positions***

Rhythms believes that SWBT should be required to update databases with information concerning new network architectures as they are deployed. Rhythms also makes clear that other data elements may also be necessary to provision xDSL in a fiber-fed DLC configuration, but because they have little technical and operational information about Project Pronto, CLECs do

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<sup>539</sup> Tr. at 824-825. (SWBT apparently intends to charge CLECs \$85 for manual look ups and updates of loop provisioning information)

<sup>540</sup> *DSL Arbitration Award (Revised Order Approving Interconnection Agreements)* at 2 (Feb. 2000).

not know exactly what information they need.<sup>542</sup> Rhythms indicates that it will need access to such information in order to determine how to provision xDSL service on a loop configured through a fiber-fed DLC.<sup>543</sup> Rhythms believes that such data includes, at a minimum, deployment dates for remote terminals ("RTs"), location of RTs, wire center served by the RT, type of structure for the RT (hut, cabinet, controlled environmental vault), space available in the RT for CLEC equipment, slots available for xDSL cards in the next generation digital loop carrier ("NGDLC") equipment in the RT, number of ports initially available on the NGDLC equipment available for CLECs to provide xDSL line-shared services, and fill rates for the NGDLC ports and the RTs.<sup>544</sup> IP and Sage agree that SWBT should be required to update its database as new networks are deployed. IP and Sage believe that this is vital to the CLECs in order to receive timely information through the loop qualification process.

### ***SWBT's Position***

SWBT argues that it is committed to updating manual records as its manual records are mechanized, just as it is for all loop qualification information.<sup>545</sup>

### ***Arbitrators' Decision***

The Arbitrators agree that SWBT is required to update its databases with information regarding new network architectures as they are deployed. This is within the definition of the *UNE Remand Order*, which requires SWBT to provide CLECs with all information accessible to SWBT.<sup>546</sup> Without this requirement, SWBT could limit important information every time new plant was deployed. To the extent SWBT develops new systems necessary to access information or that contain additional information, SWBT is required to make such information or functionality available to the CLECs, consistent with this Award. As to the deployment information that Rhythms believes is vital to CLECs regarding Pronto, the Arbitrators believe that SWBT is required to provide this information as well. Consistent with our ruling that

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<sup>541</sup> *Id.* at 3.

<sup>542</sup> Ayala Direct at 18.

<sup>543</sup> *Id.*

<sup>544</sup> *Id.* at 18.

<sup>545</sup> SWBT Initial Brief at 100; Jacobson Direct at 18.

SWBT must provide unbundled access to Pronto, the Arbitrators believe that this information is vital for CLECs entering the market. Therefore, to the extent not already available, SWBT shall provide, at a minimum, deployment dates for remote terminals ("RTs"), location of RTs, wire centers served by the RT, type of structure for the RT (hut, cabinet, controlled environmental vault), and space available in the RT for CLEC equipment. SWBT shall post this information on its website for the benefit of all CLECs.

21. **When and how should SWBT fulfill its obligation to provide mechanized, real-time, electronic access to their OSS (including all backend systems, databases, records and the data contained therein) for pre-ordering functions?**
28. **When and how should SWBT fulfill its obligation to provide mechanized, real-time, electronic access to its OSS (including all backend systems, databases, records and the data contained therein) for ordering functions?**
32. **When and how should SWBT fulfill its obligation to provide mechanized, real-time, electronic access to its OSS (including all backend systems, databases, records and the data contained therein) for provisioning functions?**
42. **When and how should SWBT fulfill its obligation to provide mechanized, real-time, electronic access to its OSS (including all backend systems, databases, records and the data contained therein) for repair and maintenance functions?**

#### ***CLECs' Positions***

Rhythms argues that SWBT should provide read-only access to all of SWBT's databases, gateways, and interfaces, and the information contained therein, used to support pre-ordering, ordering, provisioning, testing and maintenance, and billing for xDSL services.<sup>547</sup> Rhythms contends that pursuant to the *UNE Remand Order*, CLECs must have direct access to these systems because SWBT personnel have that option.<sup>548</sup> Rhythms points out that the Illinois

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<sup>546</sup> *UNE Remand Order* ¶ 427.

<sup>547</sup> Ayala Direct at 30.

<sup>548</sup> *Id.*

Commerce Commission ordered SBC-Ameritech to provide read-only access to information in Ameritech's databases and backend systems.<sup>549</sup>

Rhythms claims that gateway access is insufficient because it delays access to the most recently updated information. When SWBT updates its databases with new information, CLECs cannot get such information until SWBT issues a new version of its gateway software, and CLECs are able to install it and get it to work error free. With direct access, CLECs would be able to obtain such information immediately. Rhythms also contends that access via gateways and graphic user interfaces ("GUIs") is slower than direct access, which would provide real time query capabilities.<sup>550</sup>

Rhythms asserts that SWBT's backend systems will be able to handle the added load of direct access inquiries by CLECs. Rhythms explains that SBC must have upgraded or expanded its systems to handle loop qualification requests for the 6 million customers that it expects to serve during the next three years.<sup>551</sup> IP and Sage support Rhythms' position and arguments on this issue.

### ***SWBT's Position***

SWBT argues that it should not provide direct access to its backend systems and databases.<sup>552</sup> SWBT states that it has fulfilled its obligation to provide CLECs with nondiscriminatory access to its OSS functions via its gateway systems.<sup>553</sup> SWBT contends that the FCC has never required ILECs to provide CLECs with direct access to the ILEC's backend systems and databases. Also, SWBT argues that allowing CLECs such access would adversely affect SWBT's ability to protect proprietary and confidential business information contained in those systems that are not relevant to OSS functions. SWBT also proposes that direct access to

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<sup>549</sup> *Id.* at 31-32.

<sup>550</sup> Rhythms Ex. 7, Rebuttal Testimony of Joseph Ayala "Ayala Rebuttal" at 15-16. (October 20, 2000).

<sup>551</sup> Ayala Direct at 3.

<sup>552</sup> Jacobson Direct at 8-9.

<sup>553</sup> *Id.* at 8.

backend systems and databases would merely give CLECs access to unformatted and cryptic information that would not be usable by the CLECs.<sup>554</sup>

### ***Arbitrator's Decision***

The Arbitrators conclude that SWBT must provide mechanized, real-time, electronic access to its OSS for pre-ordering, ordering, provisioning, maintenance and repair functions, including all backend systems, databases, records and the data contained therein to CLECs on a non-discriminatory basis.

In the *Local Competition First Report and Order*, the FCC concluded that ILECs must provide access to OSS on an unbundled basis to requesting carriers, as OSS is defined as an unbundled network element under section 251 (c)(3) of the FTA 1996.<sup>555</sup> The FCC explained that operations support systems can be characterized as databases or facilities used in the provision of a telecommunications service, the information contained in and processed by these systems, and access to the functionality of these systems.<sup>556</sup> Under any of these definitions, operations support systems are subject to the nondiscriminatory access imposed by section 251(c)(3) of the Act.<sup>557</sup> Without access to review available telephone numbers, service interval information, and maintenance histories, competing carriers would operate at a significant disadvantage with respect to the incumbent.<sup>558</sup> In addition, other information, such as the facilities and services assigned to a particular customer, is vital to a competing carrier's ability to provision and offer competing services to ILEC customers.<sup>559</sup>

In the *UNE Remand Order*, the FCC reaffirmed its definition to include the manual, computerized, and automated systems of the ILEC, together with the associated business processes and the up-to-date data maintained in those systems.<sup>560</sup> In addition, the FCC clarified

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<sup>554</sup> Jacobson Direct at 7.

<sup>555</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15763-68, ¶ 516.

<sup>556</sup> *Id.* ¶ 523.

<sup>557</sup> *Id.* ¶ 517.

<sup>558</sup> *Id.* ¶ 518.

<sup>559</sup> *Id.* ¶ 516-28.

<sup>560</sup> *UNE Remand Order* ¶ 425.

that OSS necessarily includes access to loop qualification information.<sup>561</sup> The incumbent must provide access to all its data, information, and systems, and the ILEC is not permitted to filter this information.<sup>562</sup> For instance, an ILEC cannot limit a CLEC's access to loop length data so that it is only provided a red, yellow, or green indicator; because underlying loop qualification exists in SBC's manual, computerized, and/or automated systems, it must be available to the CLEC.<sup>563</sup> In addition, access to ILEC data, information, and systems is not limited to access that the retail arm of the ILEC possesses; rather, if information exists anywhere within the ILEC's backoffice and can be accessed by any of the ILEC's personnel, retail, wholesale, or otherwise, it must be provided to CLECs.<sup>564</sup>

SWBT argued that its existing gateways satisfy the required access to OSS. The gateways, including DataGate, Verigate, EDI, LEX, CORBA, LSR, and TA, were designed for CLEC remote access of SWBT's databases. Yet these gateways as they are currently configured do not provide access to all of the information contained in SWBT's databases and do not access to all of SWBT's backend systems.<sup>565</sup> For example, as part of the pre-order process, CLECs query SWBT to determine if an xDSL loop is available to serve a customer. CLECs have expressed a desire to receive information on all loops available to a customer, so that a CLEC can choose the most favorable loop. Conversely, SWBT testified that CLECs should be limited to provisioning information for only one loop at a time.<sup>566</sup> The Arbitrators find that policy may preclude CLEC access to loop information for alternate loops capable of serving a given address.<sup>567</sup>

In addition, SWBT argued that some filters are required on the gateway systems to protect proprietary and confidential business information from being accessed in backend systems. SWBT offers as an example the TIRKS and SWITCH databases, which contain the

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<sup>561</sup> *Id.* ¶ 426.

<sup>562</sup> *Id.* ¶ 427-428. As an example, an ILEC must provide access to underlying loop information and not filter the information so it pertains only to a specific type of xDSL.

<sup>563</sup> *Id.* ¶ 428.

<sup>564</sup> *UNE Remand Order* ¶ 430.

<sup>565</sup> *Tr.* 776-780.

<sup>566</sup> *Jacobson Rebuttal* at 20.

<sup>567</sup> *See DPL Issue No. 22.*

inventory of SWBT's circuits as well as those of circuits used by CLECs. SWBT states that direct access to a database like SWITCH would provide a CLEC with the loop design information belonging to other CLECs.<sup>568</sup>

The Arbitrators acknowledge that confidentiality is a concern when providing CLECs with access to backend systems. However, confidentiality concerns do not adequately justify SWBT casting a wide net and determining that CLECs should not access any backend system. Rather, adequate constraints should be placed on CLEC's access to these systems, so that the only information that is blocked is information that is confidential or proprietary. Furthermore, SWBT has been inconsistent in its claims that certain databases contain proprietary information. SWBT's testimony indicated that the SWITCH system does not have the capability to designate "ownership" of equipment to anyone but SWBT.<sup>569</sup> In the hearing, it was clarified that the SWITCH database does not designate ownership of equipment by company.<sup>570</sup> These inconsistencies add further weight to the argument that SWBT may inappropriately limit CLECs access to backend systems.

The CLECs attempt to draw a distinction between "direct access" and real-time mechanized access via gateways. The Arbitrators, however, believe that it would be impractical for SWBT to allow CLEC personnel physical access to SWBT's offices in order to access the databases via the same terminals ILEC employees use. Rather, access should be provided remotely through a gateway system. The FCC has made consistent endorsement that the CLECs should use gateways to access incumbent's backend systems.<sup>571</sup> Thus, SWBT has asserted that the gateways it has provided, including EDI and LEX, satisfy FCC requirements. The Arbitrators conclude, however, that these existing gateways may fall short of providing the access to ILEC backend systems and the information contained that is essential to providing CLECs with a meaningful opportunity to compete. Therefore the Arbitrators believe the issue is not direct access vs. gateway, but whether the access the gateway provides is adequate.

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<sup>568</sup> Jacobson Direct at 8-9.

<sup>569</sup> Schlackman Direct at 14-5.

<sup>570</sup> Tr. at 798.

<sup>571</sup> *Local Competition First Report and Order*, ¶ 527.

To determine if the gateway systems provided to CLECs provide the required information, the gateway should be able to produce quickly and efficiently any data in SWBT's systems that is not determined to be restricted due to confidentiality concerns. Nondiscriminatory access includes the functionality of any internal systems the ILEC employs in performing pre-ordering, ordering, billing, maintenance, and repair functions for its customers.<sup>572</sup> If SWBT's gateway systems for CLECs, such as DataGate, EDI, and LEX, cannot reproduce the functionality of SWBT internal systems, they must be modified to do so. The Arbitrators find that the minimum necessary filters shall be in place to prevent CLECs from obtaining access to proprietary or confidential information such as design and location of loops belonging to other CLECs.

SWBT's backend systems shall be enhanced to provided to CLECs via EDI, LEX, and other such gateway systems to all information existing anywhere within SWBT's backoffice that can be accessed by any of SWBT's personnel.<sup>573</sup> As these systems are upgraded, supplemented, or replaced as needed, the CLECs should continue to receive the current level of access.

- 29. What process should SWBT use to convert an existing xDSL customer to a new carrier?**
- 30(a). Should CLECs be able to use a single LSR (completely MOG-able) for converting a customer to a CLEC customer?**
- 30(b). If so, should the process be available on or before March 2001? (IP, et al. Issue No. 14 a, b)**

### ***CLECs' Positions***

Parties refer to the process of converting an existing xDSL customer to a new carrier as the Local Service Request (LSR) process. IP and AT&T argue that there must be a single

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<sup>572</sup> *UNE Remand Order* ¶ 425-429.

<sup>573</sup> *Id.* ¶ 430.

LSR that flows through SWBT's mechanized order generator (MOG) electronically to convert a xDSL customer to another carrier.<sup>574</sup> IP argues that a MOG-able<sup>575</sup> process is critical to xDSL provisioning, and a nondiscriminatory deployment of a customer conversion process must include a completely MOG-able LSR.<sup>576</sup> IP's and AT&T's understanding is that SBC has agreed to provide the CLEC-to-CLEC conversion LSR as requested, but a final LSR process has yet to be developed. IP contends this issue is too important to be left to an informal commitment, and the requirement should be mandated in the contract language.<sup>577</sup> IP argues that the conversion LSR should have been available and MOG-able in the May 27, 2000 release when the new line sharing LSR was available and MOG-able.<sup>578</sup> AT&T urges the Commission to determine a date by which a completely MOG-able CLEC-to-CLEC LSR will be in place, and it argues that this commitment should be incorporated into the HFPL contract language.<sup>579</sup> No other CLECs have stated a position on this issue.

### ***SWBT's Position***

SWBT concurs with CLECs on the process to convert an existing customer to a new carrier.<sup>580</sup> SWBT argues that it is working on creating a flow-through (MOG-able) LSR to convert an xDSL customer to another carrier.<sup>581</sup> SWBT states that the disputed issue is when this MOG-able LSR will be available.<sup>582</sup> SWBT contends that, in order to provide this process soon, other high-priority projects relating to CLECs will have to be delayed.<sup>583</sup>

SWBT contends that a completely MOG-able CLEC-to-CLEC conversion process is not yet available because this process has different requirements than that for a new line sharing customer. For example, one step in the conversion process to another carrier is to disconnect the

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<sup>574</sup> Gentry Direct at 27-28.

<sup>575</sup> MOG-able, also referred to as flow-through, describes a completely automated process, whereby a Local Service Request (LSR) is processed through SWBT's computer systems without the use of paper forms.

<sup>576</sup> *Id.*

<sup>577</sup> *Id.*

<sup>578</sup> *Id.*

<sup>579</sup> Turner Direct at 30-31.

<sup>580</sup> Tr. at 921-22.

<sup>581</sup> Tr. at 920-21.

<sup>582</sup> Tr. at 922.

<sup>583</sup> *Id.*

customer from its current provider. SWBT states that its internal systems cannot identify where to disconnect HFPL service, as the disconnect order does not tell SWBT what billing account number to take the circuit off of or what circuit to disconnect.<sup>584</sup> With a new connect order there is no billing account for xDSL or a circuit already connected for xDSL, so these problems do not exist.

### ***Arbitrators' Decision***

The Arbitrators conclude that the parties are in agreement that CLECs should be able to use a single, completely MOG-able LSR for converting an existing line-shared xDSL customer to another carrier. However, the date by when the MOG-able LSR will be fully implemented has not been resolved. The Arbitrators find that SWBT shall have a completely MOG-able CLEC-to-CLEC conversion LSR process in place within three months of the issuance of this Award. A completely MOG-able CLEC-to-CLEC LSR is essential to create opportunities for meaningful competition. A manual process contains increased potential for error over a mechanized process. The CLEC-to-CLEC migration involves three separate orders, Disconnect, Change, and New Connect (D,C, and N). Errors in this process can lead to a customer experiencing a substantial lapse in service. Because the xDSL is being provided on the same loop as voice, errors in the conversion process can lead to a lapse in voice service, as well.

The evidence presented indicates there is little difference between an LSR for new HFPL connects and CLEC-to-CLEC transfers. The Arbitrators acknowledge that minor differences may have necessitated SWBT to set a later deadline for the release of a CLEC-to-CLEC LSR than for a new line sharing LSR. However, more than one year has passed from the release of the new connect LSR. The Arbitrators find that SWBT has had more than enough time to provide a MOG-able LSR which is essential for accurate and timely CLEC-to-CLEC HFPL transfers. Therefore, the Arbitrators order SWBT to submit a single written, identifiable LSR process for conversion of an existing xDSL customer to a new carrier.

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<sup>584</sup> Tr. at 920-21.

**31. When and how should SWBT support pre-ordering/ordering/provisioning for CLECs on a flow-through basis?**

***CLECs' Positions***

Rhythms argues that CLECs must have real-time, mechanized flow-through access to systems for pre-ordering, ordering, and provisioning line sharing arrangements.<sup>585</sup> Specifically, Rhythms believes that SWBT should provide a system that supports a full range of provisioning needs for xDSL services. For instance, if records indicate that xDSL services cannot be provided to a customer's address due to the presence of a DLC, Rhythms believes that CLECs should have access to SWBT's databases to determine if there are alternative spare clean loops. Rhythms argues that the system should be able to request a Line-Station Transfer without human intervention.<sup>586</sup> Rhythms points out that the *UNE Remand Order* states that to the extent that ILEC employees have access to the information in an electronic format, that same information should be made available to new entrants via an electronic interface.<sup>587</sup>

Rhythms also contends that SWBT has offered in its Plan of Record (POR) that it is in the process of entering all its loop qualification into its databases, but this process will not be complete for four to six years.<sup>588</sup> With all of SWBT's loop qualification data in an electronic format, the need for manual loop qualifications may be eliminated, allowing greater flow-through of the pre-order process. No other CLECs have commented on this issue.

***SWBT's Position***

SWBT argues that pre-ordering is not required to be flow-through under FCC requirements. SWBT also points out that the *UNE Remand Order* states that to the extent ILEC employees have access to the information in an electronic format, that same format should be made available to new entrants via an electronic interface. SWBT claims that much of its loop qualification information is still in paper form, and its own employees can only access this

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<sup>585</sup> Flow-through, also referred to as MOG-able, describes a completely automated process, whereby a Local Service Request (LSR) is processed through SWBT's computer systems without the use of paper forms.

<sup>586</sup> Ayala Direct at 34.

<sup>587</sup> *UNE Remand Order* ¶ 429.

<sup>588</sup> Tr. at 889.

information in a manual format. Therefore, SWBT disagrees with CLECs that it should be required to provide this information to CLECs via an electronic, flow-through process.<sup>589</sup> SWBT argues that it has committed to increasing the percentage of data in its mechanized databases, along with other initiatives to update loop qualification information.<sup>590</sup>

SWBT contends it still has challenges in developing a flow-through ordering and provisioning process for the HFPL UNE. For instances, SWBT indicates that the removal and entry of CLEC provisioning information for line-shared service over Project Pronto architecture cannot be performed on a flow-through basis.<sup>591</sup> SWBT explains that, for line-shared service over Project Pronto architecture, a new connect order ("N" order) and a disconnect order ("D" order) can be done on a flow-through basis, but the mechanized tools that process these orders do not currently have the capability to manage a change order ("C" order).<sup>592</sup>

### ***Arbitrators' Decision***

The Arbitrators conclude that SWBT shall continue to work towards supporting ordering and provisioning functions for line sharing arrangements on a flow-through basis. In the *Local Competition First Report and Order*, the FCC endorses mechanized systems for the processing of CLEC orders. The FCC recognizes that submission of paper forms and the requirement of human intervention in the provisioning process creates greater opportunities for human error and causes additional time and financial burdens on the competitive LEC.<sup>593</sup> The Arbitrators conclude that flow-through processes would be advantageous to the ILEC as well as the CLEC, by reducing staff time and human error for all parties involved.

For pre-ordering, the Arbitrators conclude that SWBT must provide the same access to loop qualification that it has available itself. Where the ILEC has electronic access to information, that must be provided to a requesting CLEC on a non-discriminatory basis. An ILEC is not required to catalog, inventory, and make available to CLECs loop qualification

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<sup>589</sup> Jacobson Rebuttal at 19-20.

<sup>590</sup> Tr. at 893-4. For more on this topic, see DPL Issue 25.

<sup>591</sup> Lube Rebuttal at 45.

<sup>592</sup> *Id.* A D, C, and N order must be created to process the ordering of one line-shared loop; this process is known as the three-order process.

<sup>593</sup> *Local Competition First Report and Order* ¶ 525-530.

information through automated OSS when it has no such information available to itself.<sup>594</sup> Where SWBT only has access to the information manually, The Arbitrators conclude that it shall provide manual access to requesting CLECs accordingly.<sup>595</sup>

**33. Should SWBT be required to provide a Line-Station Transfer (1) when a customer is served by a loop with interferers, or (2) when a customer is served over fiber-fed DLC that does not support line sharing?**

***CLECs' Positions***

When a loop currently serving a customer with voice service is not suitable for supporting xDSL services, an alternate loop may be provided for use through a process known as a Line-Station Transfer ("LST").<sup>596</sup> Rhythms states that SWBT must clarify their procedure as to whether it performs an LST automatically when a loop is not suitable for xDSL service, or if a CLEC must request the LST for it to occur.<sup>597</sup> Rhythms also questions whether CLECs will receive information on all spare facilities available to a customer for an LST, regardless of loop composition. Rhythms contends that SWBT's parent, SBC, agreed during the POR process to provide information regarding spare facilities.<sup>598</sup>

IP argues that SWBT should not be allowed to charge for an LST.<sup>599</sup> IP states that during the line sharing collaborative sessions, CLECs were informed that such LSTs were part of the provisioning process and would not lead to a separate charge.<sup>600</sup> IP also states that SWBT has not charged ASI for LSTs, and it also does not charge for LSTs in other products that compete

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<sup>594</sup> *Id.*; DSL Arbitration Award (Revised Order) at 2.

<sup>595</sup> *Id.*

<sup>596</sup> A line-station transfer is the process of switching a customer's voice service from its current loop to another loop, one that is capable of supporting line sharing.

<sup>597</sup> Ayala Rebuttal at 34.

<sup>598</sup> Ayala Direct at 18.

<sup>599</sup> Gentry Rebuttal at 12.

<sup>600</sup> *Id.*

with DSL, such as ISDN.<sup>601</sup> IP also points out that SWBT has not provided any cost study or a proposed rate for the LST.<sup>602</sup>

### ***SWBT's Position***

SWBT agrees to perform an LST if it is able to locate an alternative xDSL capable loop.<sup>603</sup> SWBT argues that it should be able to charge for the LST.<sup>604</sup> SWBT explains that, before the HFPL was requested, the end user's loop was suitable for POTS service; therefore, SWBT is expending labor hours to provide an xDSL capable loop for which it receives no revenue, so SWBT should be entitled to cost recovery for the service it is providing.<sup>605</sup> SWBT also asserts that the LST will typically require a SWBT technician to perform work on outside plant equipment, requiring the costs associated with a field dispatch.<sup>606</sup> SWBT testified that it does not dig up the ground or open a cable splice to conduct an LST; the field work is aerial.<sup>607</sup> SWBT indicates that, although it does not perform any ground work for an LST, it does incur costs associated with dispatching a technician to perform work on outside plant equipment. Therefore, SWBT believes that it should be compensated for this additional work.

### ***Arbitrators' Decision***

The Arbitrators conclude that the parties are in agreement that SWBT will provide a Line-Station Transfer (1) when a customer is served by a loop with interferers, or (2) when a customer is served over fiber-fed DLC that does not support line sharing. SWBT makes line and station transfers available to its retail operations and its affiliate. Under the non-discrimination and parity provisions of the FTA and the *UNE Remand Order*, SWBT must make line and station transfers available to the CLECs as well.

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<sup>601</sup> IP and Sage Reply Brief at 39.

<sup>602</sup> *Id.*

<sup>603</sup> Tr. at 289.

<sup>604</sup> Schlackman Direct at 29.

<sup>605</sup> *Id.*

<sup>606</sup> *Id.*

<sup>607</sup> Tr. at 319-321.

The Arbitrators defer the decision of whether or not SWBT may charge for the LST to Phase III of the Arbitration. This issue was not posed as part of the DPL questions, therefore parties have not had an adequate opportunity to respond.<sup>608</sup> If SWBT proposes to implement a charge, it shall provide a proposed rate with a detailed justification for the amount of the rate.

**34. What is the appropriate interval for provisioning line-shared loops, whether provisioned over all-copper or fiber-fed DLC facilities?**

***CLECs' Positions***

Rhythms proposes a phased-in approach whereby SWBT shall provision loops on increasingly shorter intervals as their expertise develops. Under Rhythms' proposal, the initial intervals would be three business days for loops that do not require conditioning and five business days for those that do; after three months these intervals shorten to two and four days, respectively; and finally after an additional three months the provisioning intervals shorten to 24 hours and three days, respectively.<sup>609</sup> Since a line-shared loop is already provisioned to the customer's premise and is operational, Rhythms argues that the provisioning interval for line-shared loops should be shorter than the intervals applicable to standard xDSL loops.<sup>610</sup> Rhythms claims that provisioning the HFPL UNE does not require any work to be performed outside of the central office.<sup>611</sup> Rhythms explains that the only physical work required for the provisioning of a line-shared loop is wiring a splitter into the existing voice service, which involves removing a cross-connect and replacing it with two new cross-connects; a process which Rhythms estimates takes less than 10 minutes.<sup>612</sup>

For loops that do not require conditioning, AT&T proposes a time frame of one day. AT&T contends that the work required to provision the HFPL UNE, which requires placing jumpers on the MDF, is a task that should take a shorter time frame than provisioning a POTS

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<sup>608</sup> The Arbitrators note that SWBT did not propose a charge for the LST; see Tr. at 322-323.

<sup>609</sup> Donovan Direct at 54.

<sup>610</sup> *Id.* at 53-54.

<sup>611</sup> *Id.*

<sup>612</sup> *Id.*

<sup>612</sup> *Id.*

loop. For loops that require conditioning, AT&T asserts that the work involved is similar to the work required for a standalone xDSL loop, and therefore recommends a three to five day interval.<sup>613</sup>

IP concurs with AT&T on the limited work required to provisioned HFPL, and emphasizes that no field work is required unless a line station transfer is necessary.<sup>614</sup> Therefore, IP proposes the same intervals proposed by AT&T *i.e.* a one day interval for loops that do not require conditioning and a five day interval for loops that require conditioning. IP further adds that these are the same intervals that were ordered by the Illinois Commission.<sup>615</sup>

### ***SWBT's Position***

SWBT proposes different intervals based on the number of loops in an order. For loops that do not require conditioning, SWBT proposes five business days for orders of 1-20 loops, and 15 days (or as agreed by the parties) for more than 20 loops. For loops that require conditioning, SWBT proposes ten business days for orders of 1-20 loops, and 15 days (or as agreed by the parties) for more than 20 loops.<sup>616</sup> SWBT contends that it offers these intervals to its own xDSL affiliate, ASI, and therefore would denote parity in provisioning.<sup>617</sup> SWBT also argues that shorter intervals would adversely affect SWBT's provisioning of other non-line sharing services. Finally, SWBT adds that the shorter intervals would not comport with the "superior quality rule" in the Eighth Circuit's opinion in IUB III.<sup>618</sup>

### ***Arbitrators' Decision***

The Arbitrators find that the provisioning and installation intervals for the HFPL UNE shall be the same as ordered in the *Interim Award*. In the *Interim Award*, the provisioning interval without conditioning was set to 3 business days *or* the provisioning and installation interval applicable to the ILEC's tariffed xDSL services *or* its affiliate's xDSL services,

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<sup>613</sup> Turner Direct at 27-28.

<sup>614</sup> Gentry Direct at 21.

<sup>615</sup> *Id.* at 22-23.

<sup>616</sup> Schlackman Direct at 30.

<sup>617</sup> *Id.* at 31.

<sup>618</sup> *Id.* at 31-33.

whichever is less. Where conditioning is requested, the interval was set to 10 business days *or* the provisioning and installation interval applicable to the ILEC's tariffed xDSL or line-shared services *or* its affiliate's xDSL or line-shared services, whichever is less. The Arbitrators find that longer intervals would not be appropriate, as the process involved in provisioning line-shared loops is shorter than that of provisioning standalone xDSL loops, as shown in the *Interim Award*. For example, there is no lack of facilities issue with line-shared loops, as the customer already has a loop connected to the premises. Conversely, the Arbitrators do not agree that shorter intervals would be appropriate either, because shorter intervals do not take into account SWBT's workload and the practical reality of provisioning an order the moment it is submitted. The Arbitrators find that the intervals determined in the *Interim Award* appropriately balance SWBT's and CLECs' concerns for provisioning line-shared loops, and therefore should be adopted permanently.

15. **What should the provisioning intervals be for CLEC to CLEC conversions of line sharing? (IP, et al., Issue No. 17)**
35. **What is the appropriate provisioning interval for converting an existing xDSL customer to another carrier?**

#### ***CLECs' Positions***

Rhythms proposes that provisioning of CLEC-to-CLEC conversions should have no longer an interval than those applicable to line sharing orders. Rhythms explains that it should take no longer to convert an existing xDSL customer from one carrier to another than it takes to provision an initial line-shared order.<sup>619</sup> AT&T proposes an interval of one day, arguing that HFPL conversions between CLECs requires only the removal of one jumper and the installation of another; a simpler process than provisioning HFPL initially.<sup>620</sup> IP desires the same provisioning interval for new connects, as ordered by the Illinois Commission. The Illinois Commission approved a 3-2-1 step-down interval for loops requiring no conditioning.<sup>621</sup> IP

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<sup>619</sup> Donovan Direct at 53-54.

<sup>620</sup> Turner Direct at 28.

<sup>621</sup> Illinois Commerce Commission Line Sharing Arbitration Decision at 25 (August 20, 2000).

contends that if the Arbitrators choose a longer interval for new connects, it should still be a tiered provisioning interval that would step based on the cross-connect work required. IP contends that a CLEC-to-CLEC HFPL conversion is a simpler process than provisioning a new HFPL UNE. IP explains that only one cross-connect will be needed when both data providers use ILEC-owned splitters, and up to three cross-connects when a customer switches from a data provider using a CLEC-owned splitter to an ILEC-owned splitter.<sup>622</sup>

### *SWBT's Position*

SWBT suggests three different intervals depending on the type of service arrangement included in the transfer.<sup>623</sup> However, SWBT has been inconsistent in its proposals for length of interval(s). SWBT's witness Mr. Lube, proposes a five day interval for the option SWBT refers to as the data with line-shared subloop, and a six-to-ten day interval for the data only offering. For the combined voice and data offering, no specific interval was indicated.<sup>624</sup> On the other hand, SWBT witness Ms. Schlackman proposes a three to five day interval for all CLEC-to-CLEC conversions in her direct testimony and an interval that is parity with those provided to SWBT's data affiliate and SWBT's own retail customers in her rebuttal testimony.<sup>625</sup> Further, during the hearing, Ms. Schlackman stated that a three day interval was appropriate regardless of whether or not three days was parity.<sup>626</sup> SWBT explains that there is no practical way for it to offer scaleable (or tiered) provisioning intervals based on the number of cross connects, as the ordering system does not have the capability to recognize service orders by the number of cross connects needed to install the service.<sup>627</sup> SWBT contends that the interval should be based on those provided by SWBT to its data affiliate, and to its own retail customer for orders requiring similar work. However, SWBT does not have a specified interval it has committed to for retail service in Texas.<sup>628</sup>

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<sup>622</sup> Gentry Direct at 22 (Assuming that the splitters are provisioned in port-at-a-time basis).

<sup>623</sup> Tr. at 285-288.

<sup>624</sup> Tr. at 286, 288-89.

<sup>625</sup> Schlackman Direct at 36; Schlackman Rebuttal at 29.

<sup>626</sup> Tr. at 297.

<sup>627</sup> Schlackman Rebuttal at 29.

<sup>628</sup> Tr. at 314-317.

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*Arbitrators' Decision*

The Arbitrators find that the provisioning and installation intervals for converting the xDSL service of an existing HFPL UNE customer to another carrier shall be three business days. The three day interval is based on the Commission approved provisioning and installation intervals for the HFPL UNE ordered in the *Interim Award*. The Arbitrators acknowledge that there may be less work involved in provisioning CLEC-to-CLEC transfers than provisioning a new HFPL; however, a three day interval provides an appropriate amount of time to process an order, including technical and administrative work. A three day interval will also prevent CLEC-to-CLEC orders from assuming precedence over new connect orders, which could increase the likelihood of provisioning delays on new connects.<sup>629</sup>

**36. What are the appropriate provisioning processes to ensure reliable provisioning of line-shared services? (IP, et al. Issue No. 10)**

*CLECs' Positions*

IP refers to the Turn-up test process as the appropriate provisioning process for line sharing.<sup>630</sup> This test process is addressed in DPL issue 37. Rhythms refers to the OSS issues addressed in DPL issue 32 as appropriate provisioning processes. The other CLECs have no opinion on this issue.

*SWBT's Position*

SWBT explains that the Turn-up test process (addressed in DPL issue 37) is a component of the normal process of provisioning HFPL. SWBT proposes the following procedure as the appropriate provisioning process:<sup>631</sup>

1. The normal loop provisioning interval is assigned.
2. LSR flows through SWBT's order system assuming correctly formatted.

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<sup>629</sup> Tr. at 338-39.

<sup>630</sup> Gentry Direct at 24-25.

<sup>631</sup> Schlackman Rebuttal at 25-26.

3. Service Order flows to Loop Assignment Center for assignment.
4. LFACS determines if the pair assigned is DSL capable and is sent to SWITCH for CLEC's CFA assignment. If not, LFACS attempts to find a DSL capable loop.
5. CLEC provided CFA is entered into SWITCH along with splitter line, voice and data assignments.
6. C.O. technician wires circuit according to the FOMS document.
7. COT performs continuity and load tests as agreed to for all CLECs.
8. COT enters completion status in FOMS system.
9. FOMS completion triggers service order completion information if no field work is required.
10. Service order completion automatically triggers order completion notice to the CLEC, who begins testing next day orders at 5:00 p.m. the day prior to due date.
11. If the CLEC has difficulty, the CLEC calls the Local Operations Center (LOC) for handling outside of the normal repair flows.
12. The LOC technician works with the CLEC until the order is satisfactorily completed.

***Arbitrators' Decision***

The Arbitrators conclude that the provisioning process that SWBT has outlined is an appropriate process. SWBT shall formally adopt this process so that there is no uncertainty on the part of the CLECs as to the steps of the provisioning process.

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**IX. MAINTENANCE AND TESTING ISSUES****DPL ISSUES 43-45****43. What terms and conditions should govern the testing, maintenance and repair of line-shared all-copper loops and fiber-fed DLC loops?*****CLECs' Positions***

IP proposes that testing of line-shared loops during the provisioning process include the line sharing Turn-up test, addressed in DPL issue 37. For maintenance and repair after the loop has been provisioned, IP states that the parties have worked on maintenance issues extensively during the line sharing implementation/trial meetings and made some progress.<sup>632</sup> IP outlines a line sharing maintenance testing process that it contends was proposed by SWBT.<sup>633</sup> The maintenance testing process is to be followed 4 or more days beyond due date by LOC personnel if a CLEC has submitted a trouble report on a loop. The process is as follows:<sup>634</sup>

1. LOC performs an MLT test to identify physical faults or obvious loop balance problems. Dispatch to appropriate inside or field operations if a definitive trouble is identified.
2. LOC reviews Service Order to determine whether the loop is "Standard" or "Non Standard" for xDSL. ("Standard" complies with bridged tap and loop length recommendations for support of xDSL service.)
3. SBC frame technician performs ANI test at MECP "out" side of splitter (on IDF or MDF as appropriate) and at least CP frame appearance prior to leaving office.
4. SBC frame technician addresses any technical issues if ANI fails. If no dialtone, technician traces jumper work.
5. SBC frame technician visually inspects MEDT or MECP jumper on IDF as appropriate. If ILEC-owned splitter, verify MEDD wiring.

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<sup>632</sup> Gentry Direct at 26.

<sup>633</sup> *Id.*

<sup>634</sup> Gentry Direct at Appendix JG-2.

6. Test for Pilot tone (Step to be technically reviewed)
7. Frame technician performs ANI test at the CP on MDF. If no dial tone, trace jumpers.
8. Frame Attendant repairs any defects found at the frame and refers activities and test results to LOC.
9. Frame technician tests for presence of load coils at MDF. If load coil(s) are present, discuss with LOC.
10. LOC verifies Local Make Up (LMU of cable pair). The LMU is compared with the loop conditioning authorized by the CLEC.
11. LOC contacts CLEC to hand off repaired trouble or to discuss situations where conditioning was not authorized on the Service Order. The CLEC may wish to issue an LSR to support conditioning.
12. If "No trouble found" (NTF), the CLEC may request a "Cooperative Test" with the LOC and frame attendant (as appropriate) on the line.
13. In case of "Chronic Trouble", the CLEC may request a "Vendor Meet". The vendor meet is an appointment set for the CLEC field technical forces to meet with the ILEC field technical support at an agreed upon site. (A service charge to the CLEC will result when "Cooperative Testing" or "Vendor Meet" is requested and trouble is found to be in the CLEC's area of responsibility. No charge will be issued if the trouble is proved into the SBC plant/equipment.)
14. If the Frame finds that a port (CFA) has gone bad, the Frame will contact the LOC. The LOC will contact the CLEC to get a new port assignment. The frame will change to the new port within the repair MTTR.<sup>635</sup>

IP adds that SWBT should complete each work step completely before closing out the trouble report with "no trouble found." Also, IP asserts that the process should come under review in the same critical parameters as the provisioning process, i.e. 90 days.<sup>636</sup> Rhythms refers to issues 36, 37, 38, and 39 to define appropriate terms and conditions to govern the testing, maintenance and repair of line-shared loops. The other CLECs have no opinion on this issue.

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<sup>635</sup> Gentry Direct at Appendix JG-2.

<sup>636</sup> Gentry Direct at 26.

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*SWBT's Position*

SWBT refers to options covered in DPL issues 36, 37, 38, and 39 in response to this question. SWBT explains that CLECs have several testing options for both the high and low frequency portion of the loop: mechanized loop testing (MLT), automatic number identification (ANI), high frequency test access at the splitter, traditional end-to-end test capability, and test access at the network interface device (NID).<sup>637</sup> SWBT also refers to the line sharing Turn-up test as an appropriate testing process.

*Arbitrators' Decision*

The Arbitrators note that all parties, with the exception of IP, refer to DPL Nos. 36-39 in response to this question. However, DPL Nos. 36-39 address appropriate testing processes to take place during the provisioning process. This DPL issue addresses the terms and conditions governing the testing, maintenance and repair of loops after the loop is provisioned. Thus, the Arbitrators conclude that SWBT and the remaining CLECs in this arbitration do not have specific concerns related to this discrete issue. SWBT shall file language setting out agreed upon procedures to address testing, maintenance and repair of loops after the loop is provisioned. This procedure shall identify processes that LOC personnel shall follow after a trouble report has been submitted by a CLEC.

**44. What is the appropriate interval for repair and maintenance of line-shared loops, whether provisioned over all-copper or fiber-fed DLC facilities?**

*CLECs' Positions*

When the failure is in the loop plant, IP claims that line-shared loops are very similar to standalone loops and therefore should have the same repair interval.<sup>638</sup> When the failure is in the central office, IP proposes a 4-hour repair interval for manned offices, and an 8-hour interval for unmanned offices.<sup>639</sup> IP believes that these intervals are more than adequate to solve problems arising from cross-connects, tie cables, and splitter cards as the repairs are not difficult or time

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<sup>637</sup> Schlackman Direct at 38-40.

<sup>638</sup> Gentry Direct at 23-24.

<sup>639</sup> *Id.*

consuming. IP also adds that the MLT test will quickly help isolate whether the trouble is inside the central office or in the outside loop plant.<sup>640</sup> AT&T also proposes four and eight hour intervals for central office failures.<sup>641</sup> When the trouble is in the outside plant portion of the loop, AT&T argues that the repair interval should be the same as for regular unbundled loops as specified in the interconnection agreement.<sup>642</sup>

### ***SWBT's Position***

SWBT asserts that its contract provisions provide that it will clear all HFPL troubles in SWBT's central office within 24 hours, excluding weekends and holidays. SWBT argues that, if the trouble is in the outside plant portion of the loop, it will provide the same repair interval for the line-shared loop as it provides its own retail customers for the repair of POTS service. SWBT argues that focusing on the precise amount of time necessary to correct a problem is insufficient, as SWBT may not be able to devote all its resources to handling one individual problem from the moment a CLEC reports it.<sup>643</sup>

### ***Arbitrators' Decision***

The Arbitrators find that the repair interval for the HFPL UNE shall be 10 working hours. This interval is based on the repair interval for POTS and standalone xDSL loops set by the Commission.<sup>644</sup> The Arbitrators conclude that if the trouble is in the outside plant portion of the loop, repair processes for the HFPL UNE are not significantly different than those conducted on a standalone xDSL loop. The Arbitrators recognize that additional cross connects and loop lengths in the central office may result in a slight increase in repair time needed to pinpoint a problem. Thus, a repair interval of 10 working hours is appropriate. The Arbitrators reject the CLECs' proposal to set the repair interval based on the location of the failure, as the Arbitrators do not believe this is a practical solution. In addition, repair intervals for POTS and standalone

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<sup>640</sup> *Id.* at 23.

<sup>641</sup> Turner Direct at 28-29.

<sup>642</sup> *Id.* at 27-28.

<sup>643</sup> Schlackman Direct at 40.

<sup>644</sup> PUC Substantive Rule §26.54 (c)(6) sets the repair interval for a POTS loop at 8 working hours. The repair interval for standalone xDSL loops was set by the Commission at 9 hours to account for slightly more work that may be needed to perform repairs on these loops.

xDSL loops are not differentiated by the location of the failure and, therefore, the Arbitrators decline to adopt such a standard here.

**45(a). What should be the process for provisioning where the ILEC has not tied down cable properly on or before due date?**

**45(b). Should that situation be treated on a more expedited basis than the repair interval?(IP, et al. Issue No. 9 a, b)**

***CLEC's Position***

IP and AT&T propose that, in the event SWBT fails to tie down cable on or before the due date, such failure should be treated as a provisioning failure and be handled on expedited repair. IP and AT&T also assert that, for performance measurement purposes, this failure should be shown as a provisioning failure rather than tracked as a trouble report. IP adds that these requirements should be explicitly included in the HFPL Appendix approved by the Commission. IP contends that if the SWBT technician does not complete the installation work appropriately and on time, then the CLEC must have an opportunity to expedite the installation and not rely on the standard repair deadline provided by SWBT.<sup>645</sup> IP and AT&T argue that since provisioning is the most sensitive time for a CLEC to form a reputation in the mind of a customer, expedited treatment is warranted and standard repair intervals should not be applied in this situation. AT&T proposes the four and eight hour repair intervals listed in response to No. 44, to be applied specifically to provisioning trouble if they are not adopted as an HFPL repair interval.

***SWBT's Position***

SWBT argues that this situation is addressed in the line sharing Turn-up test procedures, discussed in DPL No. 37. In the Turn-up test, the ILEC is required to have cable tied down properly by 5:00 p.m. on the day before the due date. The CLEC may test the loop after 5:00 p.m. to determine if the central office work has been correctly provisioned. If the CLEC determines any transmission trouble, the CLEC contacts the LOC so that SWBT can isolate and repair the trouble. SWBT explains that it offers a 72 hour window for the CLEC to refer troubles

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<sup>645</sup> Gentry Direct at 24.

on the newly installed HFPL loop and during that time its employees in the LOC will work with the CLEC to resolve any installation- related errors in a real time and expedited fashion.<sup>646</sup>

### *Arbitrators' Decision*

Proper provisioning is essential to providing equal opportunity for competition in the xDSL market. xDSL provisioning has a poor reputation among the public at the current time, a reputation that negatively affects the entire xDSL technology market. Delays in provisioning serve to degrade the CLEC, and not the ILEC, in the mind of the customer at a time when the customer is forming first impressions about the CLEC.

The Arbitrators conclude that failure to tie down cable properly is a provisioning issue, not a repair issue. However, the Arbitrators acknowledge that SWBT has provided a 72 hour window for the CLEC to report problems with the newly installed HFPL loop. Therefore, a problem reported on a loop after 72 hours following provisioning completion shall be reported as a trouble ticket. If a CLEC reports a problem with a loop after 5:00 p.m. on due date minus one and before this 72 hour interval has expired, the problem shall be reported as a provisioning error and recorded in the appropriate provisioning performance measures.

With regard to an expedited process to resolve provisioning problems, the Arbitrators concur with SWBT that it has already agreed to resolve installation-related errors in a real time and expedited fashion. This agreement is codified in the line sharing Turn-up test process outlined in DPL No. 37.

The Turn-up test requires that the CLEC be allowed to re-test the line after SWBT corrects provisioning errors. Once the CLEC has had an opportunity to verify the loop is provisioned properly, the jeopardy is removed on the loop. The Turn-up test process implies that provisioning errors result in a jeopardy being placed on a loop, not a trouble ticket. The Arbitrators find that this is an appropriate process, as trouble tickets should be reserved for repair issues, not provisioning issues.

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<sup>646</sup> See DPL Issue 37.

The Turn-up test process does not specifically indicate the expedited interval for responding to a jeopardy and making any necessary changes so that cable is properly tied down. The Arbitrators note that the current repair interval for standalone xDSL loops is nine hours. The work required by the ILEC as a result of failing to tie down cable by the due date is equal to or less than that required for repair of standalone xDSL loops. Therefore, the Arbitrators find that in the event SWBT fails to tie down cable properly on or before the due date, a deadline of the due date provides more than enough time to fix any provisioning errors. The Arbitrators also note that a cable that is not completed on due date should be recorded as a missed deadline in accordance with SWBT performance measures.

## **X. COSTING AND PRICING ISSUES**

### **DPL ISSUES 48-55**

- 48. What are the appropriate recurring and non-recurring charges for all elements of the all-copper Line sharing UNE under the FCC's Line Sharing Order (99-355), and costing principles established in Texas?**

#### ***CLECs' Positions***

AT&T argues that a zero price for the HFPL UNE is both anti-competitive and unjustified when viewed in light of the entire telecommunication marketplace.<sup>647</sup> AT&T explains that a zero price means that data service providers, unlike other ILEC competitors, are permitted to use the loop without contributing to support the ILEC's network. AT&T maintains that all users of the loop network element should share in its cost.<sup>648</sup> AT&T asserts that a zero price for the HFPL UNE permits some CLECs to bear no cost for one of the most important assets they utilize in providing their service.<sup>649</sup> AT&T argues that the fact that SWBT may not have charged its affiliate for a portion of the unbundled loop in the past should not cause this

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<sup>647</sup> Turner Direct at 16.

<sup>648</sup> Turner Rebuttal at 28.

<sup>649</sup> Turner Direct at 16.

Commission to perpetuate this faulty approach in the future.<sup>650</sup> At hearing, AT&T's witness Turner clarified that the price for the HFPL UNE should be approximately 30 to 40 percent of the wholesale loop rate.<sup>651</sup> Mr. Turner added that if the Commission cannot ensure that SWBT will not double recover because of the additional revenue received from the HFPL, then the price for the HFPL UNE should be zero.<sup>652</sup>

AT&T offers several arguments to support its assertion that setting a non-zero price is important for pro-competitive and equitable reasons.<sup>653</sup> First, AT&T argues that there is no basis to artificially lower the cost of one service to the disadvantage of another service regardless of the identity of the voice service provider.<sup>654</sup> Second, AT&T asserts that as voice services already provide the bulk of voice USF support, a zero price for line sharing would further advantage data carriers over voice carriers.<sup>655</sup> Third, AT&T believes that providing cost advantages for xDSL technology over circuit switched technologies creates artificial incentives to deliver voice services in the HFPL, leading to an increase in the abandonment rate of the voice telephony infrastructure.<sup>656</sup> Fourth, AT&T indicates that zero pricing of the HFPL potentially disadvantages facilities-based competitors who (i) must pay the entire cost of the loop (which often exceeds the price of a local service access line); (ii) will have little ability to attract xDSL partners to share in the cost of the loop; and (iii) will not be able to realize economies flowing from joint use of the loop.<sup>657</sup> AT&T, believes that setting a zero price for the HFPL will have long lasting negative impacts on the development of competition for this new technology.<sup>658</sup>

Conversely, AT&T also maintains that applying a non-zero price for the HFPL UNE creates a new revenue stream for SWBT that has no offsetting cost.<sup>659</sup> AT&T explains that

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<sup>650</sup> *Id.* at 17-18.

<sup>651</sup> Tr. at 1223.

<sup>652</sup> *Id.*

<sup>653</sup> Turner Direct at 17-18

<sup>654</sup> *Id.*

<sup>655</sup> *Id.*

<sup>656</sup> *Id.*

<sup>657</sup> *Id.*

<sup>658</sup> *Id.*

<sup>659</sup> *Id.*

SWBT would recover more than the cost basis of the loop and customers that purchase both voice and data service through line sharing will effectively pay for the loop twice.<sup>660</sup> AT&T recommends that if a non-zero price is set for the analog HFPL UNE, the retail customer who pays for both voice and data services over line sharing should receive a credit from the voice service provider.<sup>661</sup> AT&T acknowledges that there are many complicating details associated with its proposed approach (particularly related to the Universal Service Fund and the disparity between loop *costs* and retail local service *rates*).

Rhythms asserts that sound policy requires the Commission to establish a price for the HFPL UNE that equals the cost of the analog HFPL UNE, which is zero. Rhythms explains that the HFPL UNE does not create an incremental cost.<sup>662</sup> Rhythms argues that a \$0 price is cost-based and non-discriminatory because the incumbent does not incur any incremental cost to provision the HFPL.<sup>663</sup> Rhythms also believes that it is important to note that CLECs will be paying substantial recurring charges to SWBT in connection with line sharing; therefore, CLECs will not be receiving a free ride with a zero HFPL UNE charge. Rhythms clarifies that the real issue is what additional charge would be received for access to the HFPL UNE over and above the recurring charges.

Additionally, Rhythms believes a zero price for the HFPL UNE is necessary to avoid economic discrimination.<sup>664</sup> Rhythms argues that SBC discriminates against unaffiliated xDSL providers whenever it charges a price greater than its cost.<sup>665</sup> Rhythms argues that competitive parity and the general requirement that incumbents not discriminate against competitors in pricing access to their network resources are by themselves sufficient basis upon which to require a zero rate.<sup>666</sup>

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<sup>660</sup> Turner Rebuttal at 29.

<sup>661</sup> *Id.*

<sup>662</sup> Murray Direct at 37-38.

<sup>663</sup> Rhythms Ex. 5, Rebuttal Testimony of Terry Murray "Murray Rebuttal" at 4 (October 23, 2000).

<sup>664</sup> Murray Direct at 45-48.

<sup>665</sup> *Id.* at 46.

<sup>666</sup> *Id.* at 43.

Rhythms argues that a non-zero price for the HFPL UNE would result in double recovery for SWBT and make end-users pay once more for a loop that is already being fully paid for in monthly local service rates. Consequently, Rhythms contends that both the need to prevent windfall profits and public policy considerations support its proposal to adopt no recurring line sharing charge for access to the HFPL.<sup>667</sup> Even if an offset were ordered, Rhythms continues, consumers would still pay unnecessarily high prices due to the administrative costs associated with such offset transactions.<sup>668</sup> Rhythms argues that the net effect to SWBT's revenues would be the same and the net effect to the customer would also be the same.<sup>669</sup>

Rhythms contends that it is more accurate to regard line sharing as an enhancement to analog voice service that causes no loop-related costs since the HFPL is not available on a stand-alone basis.<sup>670</sup> Rhythms contends that, if there is competition, no competing provider will be able to refuse to provide a desirable enhancement of the product or to extract a payment in excess of cost for its acquiescence in the enhancement.<sup>671</sup> Rhythms also argues that a non-zero HFPL UNE price would establish an artificially high, non-cost based price floor that will hamper competition in the advanced services market.<sup>672</sup>

Rhythms refutes AT&T's assertion that "providing cost advantages for xDSL technology over circuit switched technologies creates artificial incentives to deliver voice services in the HFPL...."<sup>673</sup> Rhythms argues that these advantages are not "artificial," as those cost advantages, if they exist, are real economic advantages.<sup>674</sup> Rhythms also refutes AT&T's suggestion that revenues from HFPL should be used to subsidize retail local exchange service. Rhythms argues that such a subsidy would likely force some residential and small business customers (those who

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<sup>667</sup> *Id.*

<sup>668</sup> Tr. at 1167.

<sup>669</sup> Tr. at 1151.

<sup>670</sup> Murray Rebuttal at 12.

<sup>671</sup> *Id.* at 13.

<sup>672</sup> Murray Direct at 43-44.

<sup>673</sup> *Id.* at 35.

<sup>674</sup> *Id.* at 36.

choose to subscribe to a competitor's line-shared xDSL-based service) to subsidize other consumers (those who choose not to purchase line-shared xDSL).<sup>675</sup>

Rhythms states that, assuming that the two portions of bandwidth on the loop are equally available on a stand-alone basis, there is no single correct way to identify a specific portion of the cost of the loop with a specific portion of that loop's bandwidth from the perspective of engineering economics.<sup>676</sup> Rhythms argues that economic teachings indicate that one perfectly plausible and reasonable allocation of joint costs is for one of the two products to get an allocation of zero; the price will depend on a number of circumstances in the market.<sup>677</sup> Rhythms asserts that the FCC has made it clear that an equal distribution of joint costs is a possibility, while allocation going as far as to almost zero (or de minimis to one of the elements that is joint with some or all others) would be acceptable.<sup>678</sup>

IP and Sage support Rhythms' proposed rates for the analog HFPL UNE.

Sprint supports a zero HFPL UNE price and strongly objects to SWBT's proposal. Sprint asserts that the decision made in the Interim Award is fully supported by the record developed in Phase II of the proceeding, as well as the FCC.<sup>679</sup>

WCOM takes no position at this time.

### ***SWBT's Position***

SWBT urges the Commission to adopt an HFPL UNE rate equal to half the Commission-approved wholesale analog UNE loop rate set in the Mega-Arbitration.<sup>680</sup> SWBT's explanation of the 50% loop rate is twofold. First, SWBT indicates that "there are two users and so just divide the cost."<sup>681</sup> Second, SWBT indicates that, in the Merger Conditions, the FCC stated that

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<sup>675</sup> *Id.* at 37.

<sup>676</sup> Murray Direct at 37-38.

<sup>677</sup> Tr. at 967.

<sup>678</sup> Tr. at 1150.

<sup>679</sup> Sprint Ex.1, Rebuttal Testimony of Steven McMahon "McMohan Rebuttal" at 14-15 (October 20, 2000).

<sup>680</sup> Tr. 1140-1144.

<sup>681</sup> Tr. at 1143.

a 50% loop rate was a reasonable substitution for line sharing.<sup>682</sup> SWBT argues that there is no mechanical or scientific method to allocate joint and common cost.<sup>683</sup> SWBT asserts that when joint costs are involved, one of the fundamental economic facts is that cost causation does not help and, therefore, parties must find something reasonable.<sup>684</sup>

SWBT explains that setting the HFPL UNE rate at its proposed level positively impacts the future investment decisions of LECs, and eliminates the negative impact a zero rate would have on the development of other broadband services. SWBT argues that the impacts from this pricing decision will extend far beyond xDSL providers, such as, build-versus-lease decisions for all CLECs, financial viability of facilities investments in cable modem and wireless broadband services, and SWBT's future investment decisions.<sup>685</sup> SWBT reasons that AT&T's position to support a non-zero rate is underscored by the fact that AT&T is a leading facilities-based competitor and the nation's largest cable operator.<sup>686</sup>

SWBT is also concerned that a zero rate for the HFPL UNE would not allow SWBT to recover the costs of the loop as prices for basic residential services do not covering all the costs associated with the loop.<sup>687</sup> SWBT explains that its proposed rate for the HFPL UNE provides compensation to SWBT for its asset. SWBT suggests that, even if there were an over-recovery issue, it needs to be addressed in the overall context of all rates that are been earned in the state.<sup>688</sup>

Additionally, SWBT asserts that while it incurs maintenance costs on loop with a zero rate, it has no revenue stream to offset the cost of dispatching a technician to take care of the

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<sup>682</sup> *Id.*

<sup>683</sup> *Id.*

<sup>684</sup> Tr. at 1145, 1148.

<sup>685</sup> SWBT Ex.5, Direct Testimony of William Fitzsimmons "Fitzsimmons Direct" at 8 (September 5, 2000).

<sup>686</sup> SWBT Ex. 6, Rebuttal Testimony of William Fitzsimmons "Fitzsimmons Rebuttal" at 4 (October 20, 2000).

<sup>687</sup> Tr. at 1176-1179, 1183, 1187.

<sup>688</sup> Tr. at 1000.

loop and provide maintenance on the high-frequency portion.<sup>689</sup> However, such a direct cost did not appear in SWBT's federal retail ADSL cost study and is not prepared for this proceeding.<sup>690</sup>

### *Arbitrators' Decision*

#### High Frequency Portion of the Loop

For the purpose of the *Interim Award*, the Arbitrators based their \$0 HFPL UNE loop rate on the following language regarding pricing and cost allocation from the *Line Sharing Order*:

"We conclude that, in arbitrations and in setting interim prices, states may require that incumbent LECs charge no more to competitive LECs for access to high frequency local loops than the amount of loop costs the incumbent LEC allocated to ADSL services when it established its interstate retail rates for those services."<sup>691</sup>

"By requiring incumbent LECs to provide access to these high frequency local loops for no more than they allocate to their own xDSL services, the price squeeze may be redressed by ensuring competitive LECs and ILECs incur the same cost for access to the bandwidth required to provide xDSL services."<sup>692</sup>

During the Interim Hearing, SWBT testified that the amount of the local loop costs allocated to its retail ADSL offering, in its cost study, was \$0.00.<sup>693</sup> Similarly, SWBT continues to assert that there is no incremental cost associated with the analog HFPL UNE.<sup>694</sup> FTA §252(d)(1) directs the Commission to establish just and reasonable rates for the HFPL UNE that are based on cost, are non-discriminatory, and may include a reasonable profit. The zero incremental cost associated with the HFPL UNE, therefore, remains uncontested. The Arbitrators find that since no incremental cost is allocated to the analog HFPL UNE, SWBT is already being compensated for any expenses incurred for the loop through other recurring and non-recurring charges such as OSS modification charges, cross connect and tie cable rates, and splitter rates. Consequently, SWBT should not be compensated for a product that does not incur

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<sup>689</sup> Tr. at 1204-1205.

<sup>690</sup> Tr. at 1205-1206.

<sup>691</sup> *Line Sharing Order* ¶ 139.

<sup>692</sup> *Id.* ¶ 141.

<sup>693</sup> Interim Hearing Tr. 524 (May 22, 2000).

<sup>694</sup> Tr. 1144, 1147.

additional incremental cost. Therefore, the Arbitrators determine that the rate for the HFPL UNE loop should be zero. The Arbitrators believe that these rates will address the FCC's concern regarding a potential price squeeze.<sup>695</sup> In addition, it will also address Rhythms' concern that unaffiliated xDSL providers will be discriminated against CLECs if SWBT charges a price greater than its incremental cost. Only a zero price will provide parity between SWBT's affiliated and unaffiliated line-shared xDSL providers.

The Arbitrators note, as Rhythms argued, under a refund proposal, the net effect to SWBT and the consumer is the same, while additional implementation costs could be substantial.<sup>696</sup> In addition, contrary to AT&T's assertion, the Arbitrators believe that a zero HFPL UNE rate will promote facility based competition in the sense that it will provide a positive incentive to CLECs to invest and develop necessary facilities other than the local loop, so that advanced services will be widely available to residential customers. Moreover, carriers may still prefer to build their own facilities since there are advantages associated with facility-based competition that cannot be realized through a line sharing arrangement, such as adopting a network with newer technology but lower cost, having additional control of the network, avoiding some of the costs incurred adjusting to the ILEC's network, and being able to collect all the revenues of data and voice services.

The Arbitrators emphasize that the HFPL rate is a cost based rate, not a value based rate. In a competitive market, customers will pay, and SWBT will receive, no more than the cost of the loop for voice and HFPL combined. The Arbitrators also note that, in its *Line Sharing Order*, the FCC states that "(c)urrently incumbent LECs are recovering the full-embedded cost of their loops through revenues recovered from intrastate business and residential voice services, access charges and intrastate access charges."<sup>697</sup> Therefore, if SWBT has continuing concerns that its retail rates do not adequately cover the costs associated with provisioning service, SWBT should seek relief from Commission in the appropriate forum. Finally, SWBT claims that it incurs

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<sup>695</sup> *Line Sharing Order* ¶ 139.

<sup>696</sup> Tr. at 1151.

<sup>697</sup> *Line Sharing Order* ¶ 152.

maintenance costs, related to the provision of HFPL.<sup>698</sup> However, SWBT has prepared no cost study to support its claim. Therefore, the Arbitrators have no basis in this record to establish such rates. If SWBT believes that it should be compensated for additional maintenance cost associated with providing the HFPL UNE, it should bring this issue to the final pricing phase of this proceeding.

#### Splitters

See Issue No. 49.

#### Cross-connects

See Issue Nos. 53-54.

#### OSS

See Issue No. 51.

#### Line and Station Transfer

The Arbitrators find no affirmative evidence in the record. Parties may present this issue in the final costing phase of the proceeding if necessary.<sup>699</sup>

#### Service Order Charges

The Arbitrators find no affirmative evidence in the record. Parties may present this issue in the final costing phase of the proceeding if necessary.

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<sup>698</sup> Tr. at 1204-1205.

<sup>699</sup> Tr. at 1048.

**49. What are the permanent incremental cost-based non-recurring and recurring rates for access to ILEC-owned splitter? (IP, et al. Issue No. 31)**

***CLECs' Positions***

AT&T argues that SWBT should not include land and building cost in the ACES factors that are applied to the splitter investment, as all of the floor space in the common area of the collocation arrangement is paid for by the CLECs through collocation space rental rates.<sup>700</sup> AT&T indicates that when a CLEC pays for space within a "cage," the CLEC also pays for a pro rata share of common area space as well.<sup>701</sup> However, splitters that are outside of the common area of the collocation arrangement will require the application of the land and building ACES factor; as such, these splitters should have a slightly higher cost than those contained within the common area of the collocation arrangement. Accordingly, AT&T asserts that if the Commission determines that splitters on a going-forward basis should be placed in close proximity to the MDF, the Commission should adopt two costs for the splitters: one for those within the common area of the collocation arrangement (previously deployed splitters) and one for those outside of the common area of the collocation arrangement.<sup>702</sup> AT&T proposes a recurring rate of \$0.91 for a splitter in the common collocation area and \$0.82 for the splitter in near proximity to MDF.<sup>703</sup> In addition, AT&T observes that the tie cables that extend between the IDF and the splitter have been included in the cost of the splitter.<sup>704</sup>

Rhythms recommends that the Arbitrators maintain the non-recurring splitter rate of \$0.89 as established in Interim Phase of the proceeding. Rhythms asserts that SWBT's revised proposed splitter charge is inflated. Rhythms explains that SWBT's cost study incorrectly increases SWBT's installation and power costs because SWBT has opted to purchase a more expensive splitter model.<sup>705</sup> Rhythms clarifies that SWBT's cost analysis inappropriately includes power costs for a passive device and an inflated placement cost for installation.

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<sup>700</sup> Turner Direct at 11.

<sup>701</sup> *Id.* (For every 100 feet of "caged" space that is leased, the CLEC also pays for 37.5 square feet of common area.)

<sup>702</sup> *Id.* at 11-12.

<sup>703</sup> *Id.* at 26.

<sup>704</sup> *Id.* at 20.

<sup>705</sup> Murray Direct at 49.

Rhythms concludes that SWBT's proposal inappropriately includes increased expenses as a result of an investment expense undertaken to reduce SWBT's expenses.<sup>706</sup> Rhythms recommends that the Commission correct SWBT's cost study by substituting SWBT's placement factor with a direct estimate of costs that SWBT will reasonably incur to place splitters and splitter shelves, and by eliminating the application of the power factor.<sup>707</sup> WCOM generally supports the range of rates proposed by AT&T and Rhythms. IP and Sage support Rhythms' proposed rate. Sprint concurs with SWBT's recurring rate per splitter.<sup>708</sup>

### ***SWBT's Position***

SWBT agrees that building investment factor should be removed from the cost analysis of the splitter and therefore revises the splitter cost from \$0.94 to \$0.85. However, a design change to reflect a splitter line card with test points rather than an external test point increases the cost to \$0.96.<sup>709</sup> SWBT states that this design change impacts the non-recurring costs to reflect the fact that less jumper placements are required when the test points are on the card.<sup>710</sup>

Based on the adjustment above, SWBT proposes a monthly recurring rate of \$0.96 for SWBT owned splitter on a line-at-a-time basis.<sup>711</sup> SWBT asserts that Rhythms' proposal of \$0.89 is based on the outcome of the Interim Phase of this proceeding and should be considered invalid because SWBT has since revised the design of the HFPL cost study.<sup>712</sup> SWBT contends that its proposed splitter rate of \$0.96 is reasonable and complies with the FCC's TELRIC rules and prior decisions of this Commission.

### ***Arbitrators' Decision***

The Arbitrators adopted an interim splitter rate of \$0.89. In this proceeding, SWBT revised its costs associated with the splitter to include a more expensive splitter line card with

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<sup>706</sup> Murray Rebuttal at 50-51.

<sup>707</sup> *Id.* at 52.

<sup>708</sup> McMahon Rebuttal at 12.

<sup>709</sup> SWBT Ex. 16, Rebuttal Testimony of James Smallwood "Smallwood Rebuttal" at 4 (September 5, 2000).

<sup>710</sup> SWBT Ex. 14, Direct Testimony of James Smallwood "Smallwood Direct" at 3 (October 20, 2000).

<sup>711</sup> Smallwood Rebuttal at 4; Tr. at 1088.

<sup>712</sup> Smallwood Direct at 3; Smallwood Rebuttal at 3-4.

test points on the card rather than an external test point.<sup>713</sup> The Arbitrators have examined SWBT's revised cost study and agree with Rhythms that additional revisions are necessary.

The Arbitrators find that SWBT's cost analysis inappropriately includes power costs for the splitter, a passive device. The Commission has previously determined that the splitter is a "passive device."<sup>714</sup> Therefore, the splitter does not require additional power costs. The Arbitrators have revised SWBT's Splitter Cost Study to delete the building factor and SWBT's HFPL Splitter Unit Investment Development Cost Study to delete the power factor for both the splitter shelf and splitter card. Therefore, the resulting rate for a SWBT-owned splitter is a monthly recurring charge of \$0.91, which corresponds to AT&T's proposal. This rate includes all the tie cables that are pre-wired from the splitter to the IDF.

The Arbitrators do not find sufficient evidence in the record to revise the placement cost for installation of the splitter as suggested by Rhythms. Therefore, the Arbitrators adopt SWBT's annual cost factors without revision.

**50. What are the appropriate recurring and non-recurring charges for all elements of the fiber-fed DLC Line Sharing UNE under the FCC's Line Sharing Order (99-355) and costing principles established in Texas?**

By agreement of the parties, this issue has been deferred until the final pricing phase of the proceeding.<sup>715</sup>

**51. Should SWBT be allowed to recover costs for modifications to their Operations Support System ("OSS") to support line sharing via an explicit charge to CLECs?**

***CLECs' Positions***

AT&T asserts that to the extent the Commission finds it appropriate for SWBT to recover its OSS costs through a monthly recurring rate, AT&T supports a three-year recovery period.

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<sup>713</sup> Smallwood Direct at 3; Smallwood Rebuttal at 3-4.

<sup>714</sup> *Line Splitting Arbitration* at 19-20.

<sup>715</sup> Tr. at 1038.

However, AT&T does not provide evidence regarding the costs associated with SWBT's OSS modifications.<sup>716</sup>

Sprint proposes a five-year recovery period for OSS costs because Sprint believes it is more consistent with SWBT's own forecasts of xDSL service growth.<sup>717</sup> Sprint asserts that calculations using the longer recovery period and more accurate forecasts results in the appropriate monthly recurring charge per line sharing loop of \$0.25.<sup>718</sup> However, Sprint does not provide evidence regarding the costs associated with SWBT's OSS modifications.

Rhythms states that SWBT has shown insufficient justification for its proposed OSS modification charge, and thus, does not comply with the FCC's recovery requirements. Rhythms argues that SWBT has not supplied any documentation establishing the specific basis for its reported costs.<sup>719</sup> Rhythms explains that the assumptions in SWBT's cost study are unreasonable and that SWBT has underestimated the number of line sharing arrangements over its proposed three-year recovery period.<sup>720</sup> Lastly, Rhythms claims that SWBT's methodology penalizes early line sharing subscribers.<sup>721</sup> Rhythms recommends that, absent additional information, the Commission not determine the appropriate monthly recurring charge. IP, Sage, and WCOM support Rhythms' position and arguments on this issue.

### ***SWBT's Position***

SWBT asserts that its proposed rate for OSS modifications comports fully with the *Line Sharing Order*. SWBT explains that the proposed rate is based on the vendor costs of implementing the OSS modifications and a product management demand forecast of the number of shared lines to be provisioned over the next three years in SBC's 13-state serving area.<sup>722</sup>

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<sup>716</sup> AT&T did not present this position in pre-filed testimony or during the hearing on the merits. However, it was included in AT&T's Initial Brief at 48.

<sup>717</sup> McMahon Rebuttal at 16.

<sup>718</sup> *Id.* at 16 and Exhibit SMM-4.

<sup>719</sup> Murray Rebuttal at 63.

<sup>720</sup> *Id.* at 64.

<sup>721</sup> *Id.* at 69-70.

<sup>722</sup> Smallwood Direct at 8-9; Tr. at 1012. SWBT testified that the modification to the OSS is based upon the entire SBC 13 state region. The methodology used to calculate the proposed rate took the total \$28,000,000 Telcordia

SWBT argues that the proposed charge is limited to the activities required to implement line sharing and accurately reflects the direct incremental cost for OSS modifications necessary to support line sharing over the HFPL.<sup>723</sup> SWBT dismisses CLEC's claims that the demand forecast is incorrect.<sup>724</sup> SWBT claims that its proposed recurring OSS modification charge of \$0.61 is both reasonable and consistent with the *Line Sharing Order*.<sup>725</sup>

### *Arbitrators' Decision*

The Arbitrators find that SWBT should be allowed to recover costs for modifications to OSS to support line sharing via an explicit charge to CLECs. The *Line Sharing Order* requires that only a reasonable portion of SWBT's OSS development costs be included in the OSS modification charge. Therefore, the Arbitrators find that only the OSS modifications necessary to implement the FCC's spectrum unbundling requirements should be included in the charge.<sup>726</sup>

The Arbitrators agree with Rhythms that SWBT has not provided sufficient detail in its OSS modification cost study to determine what is attributable to its unbundling obligations and what is not. Therefore, the Arbitrators are unable to reasonably allocate the \$28 million SWBT has purportedly incurred for OSS modifications. The Arbitrators believe that the record is insufficient regarding which costs are directly attributable to implementing the OSS modifications required by the *Merger Conditions* and the creation of ASI, and which costs are directly attributable to implementing the spectrum unbundling requirements for CLECs.<sup>727</sup> Further, the Arbitrators favor identifying specific costs for OSS modifications related to copper line sharing and costs related to fiber line sharing. However, the record only includes the total \$28 million Telecordia contract cost for OSS upgrades.

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contract cost for the line sharing upgrade and the total projected demand across the 13 states to calculate a cost per line that applies equally in all of the 13 states.

<sup>723</sup> Tr. at 1106.

<sup>724</sup> Tr. at 1097.

<sup>725</sup> Tr. at 1019-1025, 1095-1108.

<sup>726</sup> *Line Sharing Order* ¶ 106; "We find, however, that further incumbent LEC OSS development is not likely to be solely driven by unbundling requirements. Consequently, we urge the state commissions not to permit incumbent LECs to delay the availability of access to the high frequency portion of the loop while they implement automated OSS solutions, nor will we permit incumbent LECs to attribute an unreasonable portion of their OSS development costs to our spectrum unbundling requirements." (Emphasis added.)

The Arbitrators find that the less attractive alternative to reasonably allocating OSS upgrade costs is to adjust SWBT's proposed recovery period of three years. Extending the recovery period would reduce the monthly per line OSS modification charge. The record contains evidence suggesting that the recovery period be extended to five years.<sup>728</sup> In addition, the OSS cost recovery period established by the Commission in the 1997 Mega-Arbitration is 11.8 years.<sup>729</sup> The Arbitrators acknowledge the argument to extend the recovery period and note that there may be reasonable evidence to support a longer recovery period. However, the Arbitrators are not persuaded to extend the recovery period at this time.

The Arbitrators find it appropriate to re-examine the recovery costs of OSS development during the final costing of this proceeding. The Arbitrators order SWBT to provide specific evidence relating to the costs associated with OSS modifications necessary to implement the FCC's spectrum unbundling requirements. These costs shall be itemized according to copper and fiber technologies. In addition, any costs associated with OSS modifications necessary to implement the Merger Conditions that are similar to, or may overlap with, the modifications necessary to implement the FCC's spectrum unbundling requirements shall be identified.

During the interim, the \$0.61 per line recurring monthly OSS rate shall continue to be charged and remains subject to true-up based on the rate set by the Commission in the final costing phase of this proceeding.

**52. Should SWBT be allowed to charge CLECs for providing loop qualification?**

By agreement of the parties, this issue has been deferred until the final costing phase of the proceeding.<sup>730</sup>

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<sup>727</sup> The FCC's Merger Order Conditions required the creation of SWBT's advanced services affiliate, ASI, and required SBC and Ameritech to modify OSS systems. See Appendix C of the Merger Conditions Order.

<sup>728</sup> McMahon Rebuttal at 16 and Exhibit SMM-4.

<sup>729</sup> The approved depreciation rate for OSS is 8.4%.

<sup>730</sup> Tr. at 1038.

53. Should SWBT be required to absorb the cost of the tie cable that carries voice traffic from the CLEC's splitter to the ILEC's main distribution frame?
54. What are the appropriate rates for tie cables and cross-connections used in line sharing?
- 54(a). Should the costs, and ultimately the rates, for tie cable and cross-connects used in line sharing be based on efficient deployment of the ILEC-owned splitter near the Main Distribution Frame ("MDF")?
- 54(b). How many tie cables are required for efficient deployment of the ILEC-owned splitter?
- 54(c). Should the costs, and ultimately the rates, for cross-connects established in the Mega-arbitrations be used to establish cross-connect rates for line sharing? (IP, et al. Issue No. 32)

#### *CLECs' Positions*

AT&T asserts that the rates for tie cables and cross-connects should be based on the efficient deployment of ILEC-owned splitters near the MDF.<sup>731</sup> AT&T states that SWBT has assumed a common area splitter and additional equipment and distance that is not necessary for an efficient deployment of the splitter.<sup>732</sup> AT&T states that SWBT has also included an IDF between the MDF and the splitter.<sup>733</sup> AT&T argues that regardless of how SWBT chooses to engineer its offices, the CLECs should not be required to pay for the extra length of cabling because of SWBT's chosen architecture.<sup>734</sup> AT&T argues that if the splitter is placed in close proximity to the MDF, then the IDF investment would be eliminated from the tie cables and cross connects recurring charge and two of the cross connects would not be necessary.<sup>735</sup> Consequently, the recurring charge for the tie cables and cross connects should be zero.<sup>736</sup> The

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<sup>731</sup> Turner Direct at 19-20.

<sup>732</sup> *Id.* at 19.

<sup>733</sup> *Id.* at 20.

<sup>734</sup> Tr. at 1059.

<sup>735</sup> Turner Direct at 23.

<sup>736</sup> *Id.* at 21-23.

non-recurring charges would be \$14.04 for the initial cross connect and \$13.16 for the subsequent.<sup>737</sup>

In the event that the Commission permits SWBT to retain the splitter in the common area of the collocation arrangement, AT&T argues that it is possible that the IDF would not be required and, therefore, recommends excluding the IDF investment from the cost calculation.<sup>738</sup> AT&T concludes that the recurring costs for tie cables and cross connects should be reduced to \$0.17 from SWBT's proposed \$0.47.<sup>739</sup> However, AT&T proposes a recurring rate of \$0.20.<sup>740</sup> AT&T developed its proposed rate by adjusting the cost study for the recurring rate filed by SWBT.<sup>741</sup>

AT&T states that the non-recurring charge is based on the cost of performing the various cross-connects necessary to insert the splitter into the unbundled loop. AT&T explains that SWBT's cost study for the nonrecurring rates for the cross connect is inconsistent with comparable cross connect rates this Commission established in the 1997 Mega-Arbitration that were the result of a significant review by this Commission.<sup>742</sup> AT&T supports adopting the nonrecurring charges previously determined by the Commission for a 2-wire Loop-Switch Port cross connect, without testing.<sup>743</sup> AT&T explains that assuming SWBT removes one cross connect and runs five cross connects in its line sharing arrangement, the nonrecurring charge for cross connects, based on the Mega-Arbitration rates, would be \$20.62. AT&T proposes that subsequent cross connects be charged at \$19.74.<sup>744</sup> AT&T maintains that the non-recurring cost

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<sup>737</sup> *Id.* at 23.

<sup>738</sup> *Id.* at 21. In addition, AT&T contends that the cabling distance that SWBT has assumed is too long. AT&T points out that in the AT&T/MCI Collocation Cost Model, the cabling distance between the collocation arrangement and the MDF is 165 feet. If the IDF were placed half way between the collocation arrangement and the MDF, AT&T estimates the distance to be 82.5 feet.

<sup>739</sup> *Id.* at 22.

<sup>740</sup> *Id.* at 24.

<sup>741</sup> Tr. at 955.

<sup>742</sup> *Id.* at 22.

<sup>743</sup> Tr. at 1123. (The nonrecurring cross connect rate, established in the 1997 Mega-Arbitration (including the common cost factor), is \$4.17 for the initial cross connect and \$3.29 for the subsequent cross connects.)

<sup>744</sup> Turner Direct at 22-23.

in the Mega-arbitration reflects the same type of work that is been reflected in the HFPL non-recurring cross connect rate element.<sup>745</sup>

Rhythms asserts that the charges for tie cables and cross connects should assume an efficient network arrangement. Rhythms believes that in an efficient network the splitter would be installed on the MDF, obviating the need for additional cross connects and cables. Rhythms explains that a facility such as a tie cable is always needed to link voice grade service to the switch, regardless of whether line sharing is involved.<sup>746</sup> Thus, Rhythms asserts that the CLEC is not the cost causer and should not bear the cost of the existing tie cable merely because the service is reconfigured into a line sharing arrangement.<sup>747</sup> Rhythms indicates that in the efficient network configuration only three cross connects are required. Thus, Rhythms argues that SWBT should only be allowed to charge for three cross connects rather than five as proposed by SWBT.<sup>748</sup> IP and Sage support Rhythms' position and arguments on this issue.

Sprint agrees with the *Interim Award* ruling calling for a nonrecurring cost of \$4.72. Sprint supports cross connect rates that reflect an efficient configuration.<sup>749</sup> Sprint proposes three service arrangements that recognize revised nonrecurring charges for cross connects.<sup>750</sup>

In addition, Sprint supports a recurring rate of \$0.47. Sprint assumes that the monthly recurring charge equates to a per line rate that supports all the material (cable and connections), as well as engineering and installation labor required to connect the splitters to the MDF.<sup>751</sup>

WCOM generally supports the range of rates proposed by AT&T and Rhythms.

### ***SWBT's Position***

SWBT points out that in the *First Report and Order* the FCC states that TELRIC employs a "benchmark of forward-looking cost and existing network design [that] represents the

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<sup>745</sup> Tr. at 955.

<sup>746</sup> Donovan Direct at 40.

<sup>747</sup> *Id.*

<sup>748</sup> *Id.*

<sup>749</sup> McMahon Rebuttal at 11-12.

<sup>750</sup> *Id.*, Exhibit SMM-3.

incremental costs that incumbents actually expect to incur in making network elements available to new entrants.”<sup>752</sup> SWBT states that TELRIC methodology was used to develop the costs in its cost study.<sup>753</sup>

SWBT argues that the Commission should not make the assumption that SWBT will mount the splitter on or near the MDF when considering the appropriate costs for tie-cables and jumpers. SWBT asserts that its engineering guidelines do not support the mounting of equipment on MDFs. SWBT explains that placing the splitters in the collocation common area is the most efficient way for SWBT to comply with the *Line Sharing Order*’s explicit requirement of providing CLECs with test access at the splitter.

SWBT believes that CLECs should pay for all the cross connects and tie cabling necessary for line sharing since CLECs are the cost causers.<sup>754</sup> SWBT states that IDFs are intended to terminate central office ancillary equipment and through the use of tie cables connect this ancillary equipment to the end user’s circuit on the MDF.<sup>755</sup> SWBT assumes in its cost study that an IDF would be present 100% of the time.<sup>756</sup>

SWBT proposes a recurring rate of \$0.53 per HFPL for the recurring cross connect element for both ILEC and CLEC-owned splitter arrangements.<sup>757</sup> SWBT clarifies that two tie-cables constitute the recurring portion of the cross connect rate element.<sup>758</sup> The tie cables included in the cost study are used to connect circuits from the main distribution frame to the intermediate distribution frame.<sup>759</sup>

SWBT proposes two non-recurring rates for cross connects. Under the CLEC-owned arrangement, SWBT proposes \$52.99 for the initial and \$38.71 for the additional.<sup>760</sup> Under the

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<sup>751</sup> *Id.* at 7.

<sup>752</sup> *First Report and Order* ¶ 685.

<sup>753</sup> Smallwood Direct at 4.

<sup>754</sup> Schlackman Direct at 12.

<sup>755</sup> *Id.* at 17.

<sup>756</sup> Tr. 1054.

<sup>757</sup> SWBT Ex. 4, Rebuttal Testimony of Carol Chapman “Chapman Rebuttal” at 14 (October 20, 2000).

<sup>758</sup> *Id.* at 5-8; Tr. at 984.

<sup>759</sup> Smallwood Direct at 5.

<sup>760</sup> Chapman Rebuttal at 14.

ILEC-owned arrangement, SWBT proposes \$62.93 for the initial and \$45.49 for the additional.<sup>761</sup> SWBT states that the non-recurring costs for line sharing reflect the activities associated with the installation and removal of cross connect jumpers in the central office. Specifically the following activities are included: disconnecting the jumper that connects the plain old telephone service loop to the switch; establishing new jumpers at the MDF and the IDF; and, performing tests to ensure continuity.<sup>762</sup>

SWBT states that the number of jumper placements required depends on splitter ownership. If SWBT is providing the splitter, a SWBT technician will need to place five jumpers. If the CLEC owns the splitter, a SWBT technician will only need to place 4 jumpers.<sup>763</sup> For the non-recurring cross connect costs developed, SWBT states that a network subject expert provided the costing data, which includes activities involved and times for activities.<sup>764</sup>

SWBT agrees with CLECs that there are two groups of activities included in the SWBT non-recurring cost for cross connects; installing the HFPL for an existing voice customer and disconnecting the HFPL. SWBT proposes costs under disconnect cover activities associated with disconnecting line sharing off of a POTS line served by SWBT and restoring the retail voice customer's loop on the MDF to the switch port.<sup>765</sup> SWBT admits that, in its cost study, disconnecting counts for "slightly greater than half" of the cost and disconnect is assumed to happen 100% of the time.<sup>766</sup>

### ***Arbitrators' Decision***

The Arbitrators have ruled in DPL Issue No. 4 that locating the splitter on or near the MDF is not necessarily more efficient than other arrangements, considering the universe of services an ILEC has to offer. Based on that decision and applying a TELRIC standard, costing will not be based on a network configuration where splitters are located near or on the MDF.

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<sup>761</sup> Tr. at 983.

<sup>762</sup> Smallwood Direct at 10-11.

<sup>763</sup> *Id.* at 11.

<sup>764</sup> *Id.* at 11.

<sup>765</sup> Tr. at 989-991.

<sup>766</sup> Tr. at 990-991.

Therefore, the Arbitrators find that SWBT is not responsible for absorbing the costs of tie cables and cross connects, as the CLECs have proposed.

The Arbitrators believe that rates established in the Mega-Arbitration should be the basis to develop the non-recurring costs of the cross connects, as these rates have gone through significant review by the Commission, while SWBT's cost study is based on data from one subject matter expert from SWBT. The Arbitrators consider AT&T's testimony more credible regarding what activities are represented by the rates adopted from the Mega-Arb.<sup>767</sup> The rates proposed by AT&T are listed in Attachment 6, Unbundled Network Elements of the T2A under "Loop Cross Connects" in the Schedule of Prices.<sup>768</sup> Specifically, the rate developed by AT&T based on the splitter located in the common area of the collocation arrangement, including an IDF, is adopted by the Arbitrators.<sup>769</sup> Therefore, the Arbitrators adopt rates of \$20.62 for the initial, and \$19.74 for the subsequent. Based on the same reasoning, the Arbitrators also adopt the recurring rate for cross-connects developed by AT&T, \$0.20.

The Arbitrators believe that SWBT is adequately compensated for its costs as indicated by the following guideline from the FCC:

"We would expect that the costs of installing cross connects for xDSL services in general would be the same as for cross connecting loops to the competitive LECs' collocation facilities,

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<sup>767</sup> AT&T's witness developed the cost study during the Mega-Arb, while SWBT's witness did not participate in the Mega-Arb and has provided inconsistent positions regarding what activities that rate represents. SWBT indicated that it was willing to accept application of Mega-Arbitration rates for cross connects to the HFPL cross connect rate element. SWBT's prefiled direct testimony indicated that the rate element in the Mega-Arbitration represents the same activities involved in the non-recurring element and only needs to be adjusted to reflect different number of jumpers involved. However, SWBT subsequently asserted that AT&T's proposal is based on a non-recurring "Analog Loop to Switch Port" rate element that does not correlate to the work that is being performed in the non-recurring rate element for the cross connect in the HFPL study. SWBT indicated that the recurring cross connect rate developed in the Mega-Arbitration was representative of the cost of a SMAS test point, and the non-recurring rate was intended to represent the cost of a mechanized loop test (MLT). See Smallwood Direct at 12; Smallwood Rebuttal at 7.

<sup>768</sup> Appendix Pricing UNE (T2A), Schedule of Prices at 2.

<sup>769</sup> The Arbitrators note that SWBT did not challenge the assumption of 165 feet distance in the collocation proceeding and 46% of SWBT's central offices were engineered at cable lengths less than or equal to 200 feet according to a study conducted by SWBT. Therefore, the Arbitrators determine that the distance of 82.5 feet adopted by AT&T from the Collocation Cost Model regarding the distance between the IDF and MDF is appropriate. See Tr. at 945; Schlackman Direct at 21.

particularly where the splitter is located within the incumbent LEC's MDF. Accordingly, we find it reasonable to establish a presumption that, where the splitter is located within the incumbent LECs' MDF, the cost for a cross connect for entire loops and for the high frequency portion of loops should be the same."<sup>770</sup>

"If the splitter is not located within the incumbent LEC's MDF, however, then we would expect the states to allow the incumbent LEC to adjust the charge for cross connecting the competitive LEC's xDSL equipment to the incumbent LECs' facilities to reflect any cost differences arising from the different location of the splitter, compared to the MDF. We would expect this amount would be only minimally higher than for cross connecting the splitter located within the MDF to the competitive LEC's xDSL equipment."<sup>771</sup>

At the Hearing on the Merits, SWBT indicated that "minimal" was about 10%.<sup>772</sup> The Arbitrators find that rates developed by AT&T meet the criteria of being minimally higher than the rates developed under the assumption to locate the splitter on or near MDF.<sup>773</sup> In addition, two tie cables were used to develop SWBT's proposed rates. As AT&T did not mention any adjustment to the number of tie cables in its proposed rate calculation, the Arbitrators determine that it is appropriate.

**55. Has SWBT violated its obligation to negotiate in good faith by refusing to disclose cost information requested by xDSL CLECs?**

On December 1, 2000, parties agreed that this issue no longer needed to be addressed in this proceeding.<sup>774</sup>

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<sup>770</sup> *Line Sharing Order* ¶ 145.

<sup>771</sup> *Id.* ¶ 145.

<sup>772</sup> Tr. at 1091.

<sup>773</sup> The adopted rates are \$20.62 initial, \$19.74 subsequent. The proposed rates assuming the splitter is on or near the MDF are \$14.04 and \$13.06.

<sup>774</sup> Tr. at 1137.

## **XI. MISCELLANEOUS DISPUTED ISSUES**

### **DPL ISSUES 56-59**

The Parties agreed to waive all cross-examination on the following issues at the hearing. The Arbitrators base their decisions on all evidence in the record, as these issues pertain to the underlying subject matter of Sections II – VI.

#### **56. What should be the duration of the line sharing appendix?**

##### ***CLECs' Positions***

IP requests that the HFPL Appendix have a 15-year term. IP explains that such a term is necessary to offset the uncertainty created by various SBC statements and continual modifications to “voluntary” offerings. Moreover, a 15-year term is necessary from an operational and financial standpoint.<sup>775</sup>

Rhythms asserts that SWBT must offer all line sharing UNEs, including Project Pronto components, indefinitely.

##### ***SWBT's Position***

SWBT argues that the term of the CLECs' underlying interconnection agreements should define the term of the HFPL Appendices. SWBT explains that this will ensure that all portions of the agreement expire at the same time. SWBT recommends that the HFPL Appendix not have a separate term of its own.<sup>776</sup>

##### ***Arbitrators' Decision***

The Arbitrators agree with SWBT that the term of the CLECs' underlying interconnection agreements should define the term of the HFPL Appendices. In addition, as the

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<sup>775</sup> Gentry Direct at 6-8.

<sup>776</sup> Chapman Direct at 6; Chapman Rebuttal at 2-3.

Arbitrators have found that SWBT must provide CLECs access to Pronto SWBT will be required to provide the appropriate unbundled element indefinitely.

**57. What terms and conditions should govern any indemnification obligations between the parties?**

***CLECs' Positions***

IP is satisfied with the indemnification language in the interim HFPL Appendix.

Rhythms purports that any indemnification provisions beyond those already in the underlying interconnection agreements are unwarranted.

WCOM is not addressing this issue at this time.

***SWBT's Position***

SWBT asserts that it is imperative that the HFPL Appendix have comprehensive indemnification language because line sharing presents unique challenges due to the fact that two providers have responsibilities and access to shared facilities for the same end user. SWBT urges the Commission to adopt SWBT's proposed liability and indemnification clauses.

***Arbitrators' Decision***

The Arbitrators agree with Rhythms and are not persuaded to change our prior decision regarding indemnification language. The Arbitrators continue to find that the terms and conditions in the underlying interconnection agreements should apply and that additional indemnification provisions specifically for line sharing in the HFPL Appendix would be unnecessary and duplicative. SWBT has not provided compelling evidence that the existing indemnification language is not adequate.

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- 58. Should the Line Sharing Appendix include requirements that CLECs may seek dispute resolution under this Appendix at the PUC?**
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***CLECs' Positions***

IP states that the dispute resolution provisions in the CLECs' underlying interconnection agreements are sufficient.

Rhythms supports the inclusion of requirements that CLECs may seek dispute resolution.

***SWBT's Position***

SWBT asserts that the procedures for dispute resolution are defined in the CLECs' underlying interconnection agreements. Therefore, SWBT concludes that dispute resolution procedures should not be included in the HFPL Appendix.<sup>777</sup>

***Arbitrators' Decision***

See DPL Issue No. 18.

- 59. Should SWBT be required to allow existing xDSL customers to terminate their contracts without penalty if they wish to switch to xDSL services provided by a CLEC?**

***CLECs' Positions***

IP recommends that the Arbitrators specifically allow existing xDSL customers to terminate their contract without penalty if they wish to switch to xDSL services provided by a CLEC. IP argues that such a requirement would, to a small extent, address the discrimination that the FCC noted in its *Line Sharing Order*.

Rhythms asserts that SWBT should be required to allow existing xDSL customers to terminate their contracts without penalty if they wish to switch to xDSL services provided by a CLEC. Rhythms explains that otherwise, SWBT will be able to prevent consumers from getting

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<sup>777</sup> Chapman Direct at 7.

different types of xDSL service from CLECs because they are locked into long term contracts with SWBT.

### ***SWBT's Position***

SWBT explains that at this time it does not provide retail xDSL services and therefore cannot charge end users termination fees if the end user does not fulfill the terms of their contract. SWBT clarifies that ASI, SWBT's advanced services affiliate, does provide advanced services, including xDSL services. However, SWBT continues, ASI is not a party to this proceeding.<sup>778</sup>

### ***Arbitrators' Decision***

The Arbitrators agree that SWBT does not provide retail xDSL services at this time and that ASI is not a party to this proceeding.<sup>779</sup> Therefore, the Arbitrators decline to order ASI to allow existing xDSL customers to terminate their contract without penalty. The Arbitrators do not find compelling evidence in the record to support the assertion that SWBT has "locked" consumers into long-term contracts, thereby preventing CLECs from offering the services they desire.

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<sup>778</sup> *Id.* at 7-8.

<sup>779</sup> Tr. at 1180.

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## XII. IMPLEMENTATION SCHEDULE

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Pursuant to FTA § 252(c)(3), the Arbitrators provide the following “schedule for implementation of terms and conditions” of this Award and the Parties’ resulting Interconnection Agreements.

Parties submit proposed schedule/procedures  
for addressing remaining rates

July 30, 2001

Parties file Interconnection Agreements that  
comply with the Arbitration Award

August 17, 2001

SWBT provides Implementation Plan for  
Addressing TIRKS/SWITCH incompatibility

August 17, 2001

SWBT provides MOG-able CLEC-to-CLEC  
Conversion LSR Process

October 13, 2001

**XIII. CONCLUSION**

The Arbitrators conclude that the foregoing Arbitration Award resolves the disputed issues presented by the parties for arbitration. The Arbitrators further find that this resolution complies with the standards set in FTA §252(c), the *Line Sharing Order*, and P.U.C. PROC. R. 22.301-22.310.

**FTA § 252 PANEL**

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**JOHN D. MASON****ARBITRATOR**

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**ELANGO "RAJ" RAJAGOPAL****ARBITRATOR****Staff Arbitration Advisors****Kara Sheldon****Jingming Chen**







## CERTIFICATE OF SERVICE

I certify that the original and 10 copies of AT&T and TCG Phoenix's Comments on Staff's Final Report on Qwest's Compliance with Section 271, Emerging Services in Docket No. T-00000A-97-0238 were sent by overnight delivery on July 19, 2001 to:

Arizona Corporation Commission  
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Phoenix, AZ 85007

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